Interagency Wild and Scenic Rivers Coordinating Council

June 1, 1997

Dear Reader:

The Interagency Wild and Scenic Rivers Coordinating Council (Council) is pleased to provide you with the *Wild and Scenic Rivers Reference Guide (Guide)*. Chartered in 1995 by all four federal wild and scenic river managing agencies, the Council has been working to provide coordination and technical assistance in the management of wild and scenic rivers. This *Guide* will provide the river manager, involved government, or interested citizen with an interagency interpretation, perspective and application of the Wild and Scenic Rivers Act.

The *Guide* is designed to be easily added to and updated as needed. This initial mailing contains the first three technical papers, including applying Section 7 of the Wild and Scenic Rivers Act; protecting river values on private lands; and questions and answers on wild and scenic rivers. The Council is in the process of finalizing numerous other papers on a wide range of technical issues; these will be mailed as they are completed. The subjects covered by these papers have been identified by the Council's member agencies and the public as being key to the coordinated, consistent management of our national wild and scenic rivers. The Council hopes that the *Guide* assists you in the effective management and protection of your river.

In order to further meet your needs, the Council would appreciate your comments and reactions, as well as suggestions on other topics that the Council should address. If you did not receive this *Guide* directly from the Council, and you would like to receive a copy, as well as future papers, please contact one of the Council members identified in the *Guide*. Likewise, please do not hesitate to contact members about this *Guide*, or with other wild and scenic river questions.

Sincerely,

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Wild & Scenic Rivers Reference Guide

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(June 1, 1997 Version)

The Wild & Scenic Rivers Reference Guide

What this *Reference Guide* is:

The following reference materials have been developed for use by river managers and others in studying, planning and managing potential and designated wild and scenic rivers. The *Wild and Scenic Rivers Reference Guide (Reference Guide)* was developed by the Interagency Wild and Scenic Rivers Coordinating Council (Council). The purpose of the *Reference Guide* is to improve interagency coordination and increase consistency in the interpretation and application of the Wild and Scenic Rivers Act. The contents includes information about the Council, the Wild and Scenic Rivers Act and System, and technical papers developed through the Council. Extensive peer review and the contribution of many river managers have greatly enhanced the content of these papers.

What this *Reference Guide* is not:

Importantly, nothing in the *Reference Guide* modifies or replaces any agency's policy, nor the *Department of Interior and Agriculture Interagency Guidelines for Eligibility, Classification and Management of River Areas*. The Council is not a decision-making body. Any revision or creation of agency direction must occur through each agency's respective processes. This *Reference Guide* is not intended to replace coordination within each agency.

Modifications to the *Reference Guide*:

The materials in the *Reference Guide* will be updated periodically and new technical papers added. The Council welcomes suggestions for additional topics for technical papers and other additions to this guide.

For additional information, or to provide comments, please contact any member of the Council. The *Reference Guide* is not copyrighted and may be freely copied and distributed. Portions of the *Reference Guide* are also available electronically at the Council's World Wide Web site:

http://www.nps.gov/ccso/wildriverscouncil.htm

Interagency Wild & Scenic Rivers Coordinating Council

A Concept Paper

NATIONAL
WILD AND SCENIC
RIVERS SYSTEM

Bureau of Land Management
National Park Service
U.S. Fish & Wildlife Service
U.S. Forest Service

January 1995

Revised
February 1995

EXECUTIVE SUMMARY

Establishment of an Interagency Wild and Scenic Rivers Coordinating Council (Council) was supported by several agency heads at the conference marking the 25th Anniversary of the national Wild & Scenic Rivers Act in November 1993. Since that time, staff from the four wild and scenic river managing agencies have met to develop the goals and structure of the Council. An official announcement by the Assistant Secretaries launching the Council is proposed for April 1995.

The purpose of the Council is to improve interagency coordination in administering the Wild and Scenic Rivers Act, thereby improving service to the American public and enhancing protection of important river resources. The Council will address a range of issues, from management concerns on rivers presently in the National Wild and Scenic Rivers System to potential additions listed on the Nationwide Rivers Inventory, from state designations to the provision of technical assistance to other governments and non-profits under the Act.

The Council will consist of representatives of the four wild and scenic rivers administering agencies (Bureau of Land Management, National Park Service, U.S. Fish and Wildlife Service, U.S. Forest Service), with one Washington and two field staff representing each agency. Other federal agencies with river interests will be requested to designate key contacts and will participate in discussions affecting their interests. A plan for participation of the interested public will be the Council's first agenda item.

The Council will meet quarterly to develop recommendations for Agency policy and action; much of the drafting and discussion work of the Council will occur through subcommittees working between official meetings. After 4 years, the Council's purposes and accomplishments will be reviewed and its charter may be renewed.

The Council will operate at no additional cost to the government.

INTRODUCTION

The national Wild & Scenic Rivers Act is considered one of the most important pieces of conservation law ever enacted; however, taking full advantage of its provisions has been difficult. The Act has complex provisions influencing the management of resources as varied as water quantity and quality, minerals, agriculture, fisheries and recreation. The complexities of the Act are further compounded by the range of involved jurisdictions and ownerships. Consequently, effective implementation of the Wild & Scenic Rivers Act is a challenge to agency personnel and the public.

In order to provide more effective and consistent implementation of the Act, American Rivers, at the 25th Anniversary of the Wild & Scenic Rivers Act in November of 1993, recommended that the federal managing agencies form an interagency oversight council. The concept was supported by the agency heads and has since been approved by Assistant Secretaries Frampton, Armstrong and Lyons, who have directed that an Interagency Wild and Scenic Rivers Coordinating Council (Council) be established.

During November and December, 1994, principal Washington Office staff and field representatives from the Bureau of Land Management, National Park Service, U.S. Fish and Wildlife Service, and U.S. Forest Service met to develop the operating framework for the Council.

The establishment of the Council is consistent with the National Performance Review objective of creating a government that works better and costs less. The Council will provide a forum where river managers across federal agencies will discuss and resolve common problems. The forum will also permit other interested federal and state agencies and non-governmental organizations to bring forward issues for discussion and resolution. Research activities and tracking of legislation are other areas that might be coordinated through the Council.

The challenges the Council faces are to assure that the National Wild & Scenic Rivers System realizes its potential and that the Wild & Scenic Rivers Act is being interpreted and implemented consistently by all federal managing agencies.

GOALS OF THE COUNCIL

The goals of the Council may be simply stated:

Provide a national interagency forum for wild and scenic river administering agencies to identify and clarify matters of national and interagency significance concerning the implementation of the Wild & Scenic Rivers Act.

Propose, recommend and advocate coordinated actions through the member agencies.

Facilitate the resolution of issues and the coordination of actions involving federal agencies other than those responsible for the administration of wild and scenic rivers.

Increase congressional, agency and public awareness through the dissemination of information about agency wild and scenic rivers programs.

Maintain the Wild & Scenic Rivers Act as the national and international standard for river conservation.

ORGANIZATION & FUNCTION

This proposed organization of the Council is designed to be responsive to the needs of three key groups: agency personnel; department and agency management; and the public. Participation by agency personnel is important to improve on-the-ground planning and management. Oversight from the Assistant Secretaries will ensure an appropriate level of recognition for the National Wild & Scenic Rivers System. Interaction and input by the public will enhance the scope and effectiveness of responsible wild and scenic river management.

The Council will consist of representatives from the four wild and scenic rivers administering agencies (Bureau of Land Management, National Park Service, U.S. Fish and Wildlife Service, and U.S. Forest Service). The principal Washington Office wild and scenic rivers staff person will serve along with two field representatives appointed by the respective agency heads. Field representatives will serve two-year terms.

Other federal agencies affected by the wild and scenic rivers program will be requested to provide a representative to serve as a key contact. Their involvement will be on an issue-specific basis to discuss concerns, formulate solutions, and to develop consistent federal guidelines and regulation. Agencies invited to participate will be determined by the Council and may include the Army Corps of Engineers, Bureau of Reclamation, Environmental Protection Agency, and Federal Energy Regulatory Commission. These and other agencies will be encouraged to bring issues to the Council's attention. The National Park Service will also consult regularly with those states with wild and scenic river management responsibilities.

The Council will meet quarterly at a minimum to identify, prioritize and make recommendations to resolve issues. Subcommittees will be formed to address specific issues, develop alternatives, and provide analysis to the Council. These working groups will be formed using existing agency personnel, resources and protocol.

Guidance or policy recommendations developed by the Council will be forwarded to the respective agency heads for concurrence, dissemination and implementation. Operation of the Council (e.g., officers, facilitation, and resolution processes) will be developed at the first official meeting. Business may be conducted via a variety of cost-saving measures such as conference calls, electronic mail, meetings of subcommittees of the Council, etc.

Issues will be identified by agency staff and external publics. Agency staff may contact Council members directly to raise key concerns. A public involvement strategy will be developed to ensure that the Council is responsive to broad interests in river management. Further, the Council will seek appropriate opportunities to work in partnership with non-governmental groups on the full range of river protection and management issues.

IMPLEMENTATION

The Council's goals are summarized in the Draft Charter (Appendix A) for concurrence and signature by the agency heads and approval by the appropriate Assistant Secretaries. The charter will be the formal authorizing instrument officially initiating the Council, as well as empowering agencies to carry out the Council's goals.

An interagency meeting was held on February 14 and 15, 1995. At this meeting, the charter was finalized, organizational matters were resolved, and a public involvement strategy was discussed. Signing the charter is scheduled for April 5, 1995.

No additional funding or staffing is envisioned to operate the Council; however, once chartered, agency commitment (e.g., personnel, limited funding and travel) is expected to support the Council and its mission. Any funding or staffing of work will be strictly on a voluntary basis and make use of existing funding allocations. Since Council members are agency personnel who work on wild and scenic river issues as a part of their primary duties, they do not need a separate staff or allocation of funds to accomplish most of their duties associated with the Council.

Participation of the diverse publics involved in wild and scenic river studies and management will be sought. The Council will seek opportunities for partnerships through outreach efforts to inform, discuss, develop solutions, and enlist the support (organizational, political, and financial) of various constituencies. Examples of partnership opportunities could include development of databases, research efforts, information clearinghouse, and educational opportunities.

The following table displays the short term objectives (first fiscal year of work) for the Council. Assignments will depend upon the prioritization of issues conducted at each

Council meeting (based on the list in Appendix B and other issues gleaned through public involvement efforts) and partnership opportunities, outreach efforts, and other mechanisms.

	FY	Action/Issue	Target Date
1	1995	Finalize Charter; Discuss Public Involvement Strategy; Revise Concept Paper; Resolve Organizational Items	February 14-15, 1995
2	1995	Charter Signing; Release of Concept Paper	April 5, 1995
3	1995	First Council Meeting	June 13-15, 1995
4	1995	Second Council Meeting	September 19-21, 1995
5	1995	Third Council Meeting	December 5-7, 1995

CONCLUSION

As this paper has outlined, the formation of an Interagency Wild and Scenic Rivers Council is desirable, easily implemented, cost effective, efficient, and meets the standard of being responsive to the public. The coordination of agency actions and the sharing of information and experiences will result in a better product for the public and the protection of some of our most valuable resources -- our rivers.

APPENDICES

Charter
Types of Issues
Current W&SR System

CHARTER **CHARTER** **CHARTER**

Title: Interagency Wild & Scenic Rivers Coordinating Council (Council)

Primary Agencies: BLM, NPS, USFWS, USFS
Interagency Coordination With (On an issue basis): BIA, BOR, CG, COE, EPA, FERC, FHWA, NRCS, and possibly others.

Council Members:
USDA - FS, Washington Office representative + 2 field representatives
USDI - BLM, Washington Office representative + 2 field representatives
USDI - NPS, Washington Office representative + 2 field representatives
USDI - FWS, Washington Office representative + 2 field representatives

Goals:
- Provide a national interagency forum for wild and scenic river administering agencies to identify and clarify matters of national and interagency significance concerning the implementation of the Wild & Scenic Rivers Act.
- Propose, recommend and advocate coordinated actions through the member agencies.
- Facilitate the resolution of issues and the coordination of actions involving federal agencies other than those responsible for the administration of wild and scenic rivers.
- Increase congressional, agency and public awareness through the dissemination of information about agency wild and scenic rivers programs.
- Maintain the Wild & Scenic Rivers Act as the national and international standard for river conservation.

Resource Requirements: Staffing will come from existing agency program personnel; quarterly meeting location and space; telecommunications capabilities; adhoc working teams/ subcommittees for multiple and various work assignments.

Term Length: Four years; sunset September 30, 1999 - subject to re-evaluation.

Examples of Council Actions/Tasks:
- Expand interagency information sharing related to WSR planning and management to ensure greater consistency in interpretation of the WSR Act.
- Implement an ecosystem-based approach between river corridors and adjacent lands to foster a higher level of protection of water-related values.
- Enhance the protection of rivers through policy guidance related to the management of water flows, rights and quality.
- Initiate limited technical amendments to the WSR Act, e.g., establishment of final boundaries should coincide with the river management process.
- Update and revise the September 7, 1982, Secretaries Guidelines for River Areas (47 FR 39454) to reflect amendments to the WSR Act and experience gained.

Concurrence: ***Date***

Jack Ward Thomas, Chief, U.S. Forest Service — April 5, 1995

Michael P. Dombeck, Director, Bureau of Land Management — April 5, 1995

Mollie H. Beattie, Director, U.S. Fish and Wildlife Service — APR 5 1995

Roger G. Kennedy, Director, National Park Service — APR 5 1995

Approved By:

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USDA, Natural Resources and Environment — APR 5 1995

Robert Armstrong, Assistant Secretary
USDI, Lands and Minerals Management — APR 5 1995

George T. Frampton, Jr., Assistant Secretary
USDI, Fish, Wildlife, and Parks — 4/5/95

TYPES OF ISSUES

At recent meetings, interagency personnel spent time discussing the types of issues that the Council might address.

1. There have been inconsistencies among management agencies in the interpretation of the Wild & Scenic Rivers Act and the "1982 Secretaries Guidelines" (47 FR 39454) on the eligibility, suitability and management of wild and scenic rivers. Field offices have been forced to develop policies independently, creating inconsistencies in the application of various provisions of the Wild & Scenic Rivers Act and separate, yet similar, guidelines on the application of eligibility criteria. These variations result in confusion by the public and, in some cases, have led to lengthy appeals and costly legal challenges. There is presently limited dissemination of information, and few attempts have been made to develop consistent approaches to resolve interagency issues.

2. There is a need to develop guidelines for protection of identified river values on private and state lands within designated river corridors. Currently, there is a wide variation in management activities exhibited by various states and private landowners in the execution of their responsibility to protect river values under the Wild & Scenic Rivers Act. This responsibility is not well defined in the Act and is widely interpreted. This uncertainty results in controversy in wild and scenic river planning and administration.

3. Presently, there is limited understanding and use of the technical assistance provisions of the Wild & Scenic Rivers Act (Section 11(b)(1)). This results in missed opportunities to partner with the public, both inside and outside the designated river corridor and to protect river values.

4. There is a need to refine interpretation of the standards for development of water resource projects under Section 7. This issue is critical since the prohibition of environmentally destructive water resource development projects is the key provision of the Wild & Scenic Rivers Act. Section 7 requires development of rigorous and consistent interagency evaluation procedures to protect river resources.

5. The federal government's responsibility for the management of the water column (minimum flow, water quality, federal reserve water rights, etc.) of designated segments is variously interpreted, limiting the ability of managing agencies to protect water-related values.

6. There are uncertainties and inconsistencies in the management of surface water use and the bed/banks of navigable and non-navigable rivers. This is resulting in the inability to protect some river resource values and challenges to agency jurisdiction.

7. There is a need to promulgate regulations and define terms relating to mining in Section 9 to protect river-related resources and increase consistency in interpretation.

8. There are few formal linkages between the management of designated wild and scenic river corridors and adjacent lands. Often management practices on adjacent lands directly affect river-related values. Efforts to coordinate protection through an ecosystem based approach are important to foster a higher level of protection and enhancement of river-related values.

9. Management of federal lands on rivers designated through Section 2(a)(ii) needs to be clarified (e.g., limitations of federal expenditures, land exchanges). This situation could lead to lost opportunities to protect river values and for federal agencies to work in an appropriate partnership with state and local jurisdictions.

10. It would be desirable to establish a policy for monitoring the condition of designated and study rivers and the effectiveness of management activities.

11. Limited technical amendments to the Wild & Scenic Rivers Act (e.g., make the final boundary development timeline coincide with the river planning process) could facilitate more effective management. These changes should be considered jointly by all managing agencies.

CURRENT NATIONAL WILD & SCENIC RIVERS SYSTEM

Through 1994, there are 150 rivers in the National Wild & Scenic Rivers System, managed as follows:

The National Wild & Scenic Rivers System		
Agency	**Rivers**	**Mileage**
Bureau of Land Management	14	1,993.75
National Park Service	19	2,316.70
U.S. Fish and Wildlife Service	6	1,043.00
U.S. Forest Service	75	4,033.20
Combined Federal or Federal/State Agencies	27	351.60
States/Others	6	942.50
TOTAL	**150**	**10,679.75**

Potential Wild & Scenic Rivers

Through agency's land management planning processes, and initiatives by the public, a significant number of rivers have been identified for study as potential additions to the National Wild & Scenic Rivers System. For example, the Nationwide Rivers Inventory, maintained by the National Park Service, identifies over 2,600 river segments as potential candidates for study and/or inclusion into the National Wild & Scenic Rivers System.

Bureau of Land Management

U.S. Fish & Wildlife Service

National Park Service

U.S. Forest Service

Cover printed on 100% post-consumer waste recycled paper.

Questions & Answers on the Interagency Council

NATIONAL
WILD AND SCENIC
RIVERS SYSTEM

April 1997

Questions & Answers on the Interagency Council

Q. How will the Interagency Wild and Scenic Rivers Coordinating Council (Council) operate?

A. Copies of the "Concept Paper," which details how the Council will operate, are available by writing to the Office of Public Affairs at each of the agencies. The mailing addresses are the same for the Bureau of Land Management and U.S. Fish and Wildlife Service: 1849 C Street, NW, Washington, DC 20240. The address for the National Park Service is: Post Office Box 37127, Washington, DC 20013-7127. The U.S. Forest Service is: Post Office Box 96090, Washington, DC 20090-6090.

The Council is not a decision-making body; rather it will recommend to the managing agencies actions which may be taken. After four years, the Council's purpose and accomplishments will be reviewed, and a determination will be made on its continued existence.

Q. Will the Council create more rules and regulations?

A. No. The Council will discuss and make recommendations only to its member agencies. Its purpose is to reduce redundancy and increase consistency in the interpretation and application of the Wild and Scenic Rivers Act (Act). The establishment of the Council is consistent with the National Performance Review objective of creating a government that works better and costs less. The Council will provide a forum where river managers across federal agencies will discuss and resolve common problems. The forum will also permit other interested federal and state agencies and non-governmental organizations to bring forward issues for discussion and resolution. Announcement of any changes or new regulations in the existing *Department of Interior and Agriculture Interagency Guidelines for Eligibility, Classification and Management of River Areas* (Interagency Guidelines) would require a separate, formal administrative process.

Q. Will the Council designate rivers, or recommend new rivers for designation?

A. No. Rather than being involved in the designation of rivers, the Council will improve management approaches on rivers already in the National Wild and Scenic Rivers System (National System) and ensure that the suitability and eligibility criteria used by the agencies in their designation studies are consistent and appropriate. Studies of rivers for potential designation will continue to be initiated through legislation, or in accordance with individual agency mandates.

Q. Is there only federal representation on the Council?

A. No, there is a state representative who represents rivers administered under section 2(a)(ii) of the Act. Since the Council's purpose is to improve consistency and create efficiencies in the day-to-day administration of wild and scenic river (WSR) studies and designated river segments, the membership is primarily drawn from federal agency staff responsible for these duties. Other federal agencies with regulatory authority for programs affecting WSRs will be consulted to better coordinate their activities. The Council will make every effort to ensure that all those interested in, or affected by, WSR policy are able to participate in setting Council priorities and finding appropriate solutions.

Q. How do I raise an issue for the Council to consider or resolve?

A. The Council will seek input and advice from national, state and local river protection partners and the general public on a routine basis. Public participation will be facilitated through ad hoc meetings with regional federal agency staff, informal open houses at each quarterly meeting, and the provision of periodic updates.

Q. How will the Council's recommendations be implemented?

A. The agencies represented on the Council will decide whether to implement any recommended policy clarifications through their routine administration of river studies and designated rivers.

Q. Will operating the Council take additional money and staff time?

A. No. Council members are already involved in the study and administration of WSRs as part of their routine duties, and their expenses will be absorbed by existing agency budgets. Because the Council intends to resolve a number of longstanding inefficiencies in the interpretation and application of the Act, it is expected that involvement on the Council will actually enhance its members' effectiveness.

Q. Who should I contact if I have questions?

A. You may contact any member of the Council (names and addresses are included in this publication).

Q. How can I stay up-to-date on the Council's activities?

A. The Council will solicit information from the public on issues suitable for Council attention. In addition, the Council expects to issue status reports and periodic updates outlining its proposed work schedule and accomplishments. If you wish to be placed on the mailing list for these updates, please contact any Council member.

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NATIONAL WILD AND SCENIC RIVERS SYSTEM

Interagency Wild & Scenic Rivers Coordinating Council

Council Currents

March 1996 Volume 1

From the Council

The Council has been working on river issues for about a year. We have already traveled to several regions of the country listening to the issues and concerns of the river managers and the public. This is the first edition of the Council Currents and covers what the Council is about, a summary of the issues we are working on, and plans for the future.

The Council is trying to involve you by combining council meetings with other appropriate river management forums; e.g., the December, 1995 meeting was held concurrently with America Outdoor's "Confluence 95". The June, 1996 meeting will be held in conjunction with the American River Management Society Biennial Symposium, "Beyond the Banks."

Importantly, we view ourselves not as a group of bureaucratically appointed experts, but as a readily accessible forum to facilitate the resolution of national issues. The participation of river managers and the public is key to successful resolution of issues. Please take the opportunity to get involved by contacting any of the council members listed on the back of Council Currents. We hope this newsletter will help keep you informed and involved in Wild and Scenic River Management and the future work of the Council.

Secretaries Frampton, Armstrong and Lyons signing the council's charter.

What is the Interagency Wild & Scenic Rivers Coordinating Council?

The National Wild & Scenic Rivers Act is considered one of a half dozen most important pieces of conservation law ever enacted. Taking full advantage of its provisions has been difficult, however. The Act has complex provisions influencing the management of resources as varied as water quantity and quality, minerals, agriculture, fisheries and recreation. The complexities of the Act are further compounded by the range of involved jurisdictions and ownerships. Consequently, effective implementation of the Wild & Scenic Rivers Act is a challenge to agency personnel and the public.

In order to provide more effective and consistent implementation of the Act, American Rivers, at the 25th Anniversary of the Wild & Scenic Rivers Act, November 1993, recommended that the federal managing agencies form an interagency coordinating council. The concept was supported by the agency heads and has since been approved by Assistant Secretaries Frampton, Armstrong and Lyons, who directed that an Interagency Wild & Scenic Rivers Coordinating Council be established.

The Council consists of representatives of the four wild and scenic rivers administering agencies (Bureau of Land Management, National Park Service, Fish and Wildlife Service, Forest Service), with one Washington and two field staff representing each agency. Other federal agencies involved in aspects of river management have designated key contacts to participate in discussion and resolution of issues with the Council. Involving the interested public is a key component of the Council's agenda.

The purpose of the Council is to improve interagency coordination in administering the Wild & Scenic Rivers Act, thereby improving service to the American public and enhancing protection of important river resources. The Council provides a forum for river managers from various federal agencies to discuss and resolve common problems. The forum also permits other interested federal and state agencies and non-governmental organizations to bring forward issues for discussion and resolution. Importantly,the Council is not a decision-making body; rather, it will recommend to the managing agencies actions that may be taken. The challenges the Council faces are to assure that the National Wild & Scenic Rivers Act is being interpreted and implemented consistently by all federal managing agencies.

Enjoying gold panning on our Wild and Scenic Rivers.

How the Council Operates

The Council meets quarterly to identify, prioritize and make recommendations to resolve issues. These meetings are held at various field locations, often in association with other river-focused gatherings. To date, the Council has held several organizational meetings and hosted three field meetings:

4/95 Council Charter signed and Concept paper distributed
5/95 Open house hosted by Washington office staff in Washington, D.C.
6/95 First Council meeting in Ft. Smith, Arkansas
9/95 Council meeting in Hudson, Wisconsin
9/95 Meeting with other key federal agency representatives, hosted by Washington office staff in Washington, D.C.
12/95 Council meeting in Reno, Nevada

Future Meetings include:

3/96 Council meeting in Portland, Oregon
6/96 Council meeting in Columbus, Ohio

A portion of each field meeting is dedicated to Council members interacting with on-the-ground river managers, local and state government representatives, and interested publics. One need not, however, attend a field meeting to have input to the Council. The Council encourages anyone interested in the wild and scenic rivers program to write, call, and/or fax concerns to any of its members. The Council has been greatly appreciative of those who have taken the time to help us develop issues and begin to work on their resolution

In addition to participation of the four river-administering agencies, the Council has sought involvement of other key federal agencies with responsibility for many different aspects of river management, including the Environmental Protection Agency, Federal Highways Administration, Federal Energy Regulatory Commission, Natural Resources Conservation Service, U.S. Coast guard, U.S. Army Corps of Engineers, and the Bureau of Reclamation. In September 1995, the Washington office members of the Council facilitated a meeting to identify issues and concerns from each of these agencies and to determine a means for effective interaction with the Council.

Rafting the Gulkana Wild and Scenic River.

How Have We Listened

What Issues Are Currently Being Considered by the Council?

Information and Education —Recognizing the turnover of Wild & Scenic River staffs at local and national levels (as river managers and supporters retire or move into new positions), the Council has begun work on a compendium of wild and scenic river history, management guidance, and case examples as well as a number of papers dealing with specific topics. As these products are completed, they will be distributed to managers at all levels. In addition, the Council will be seeking partners from the private sector to help relay the message about the wild and scenic rivers program. The upcoming 30th anniversary of the Act in 1998, is an opportune time to get attention in the media for the successes and benefits of the system.

Water Resources Projects — While the Act provides a number of important measures to protect and enhance the values for which rivers are added to the national system, none is more significant than the restrictions on water resources projects provided by Section 7 of the Act. Based on the numerous questions about this section and its importance in protecting river values, a process paper is being developed. This paper describes the standards of the section, presents a key to evaluate specific water resources project proposals, includes suggested evaluation processes, and concludes with examples of the application of Section 7. This tool will provide a resource to on-the-ground river managers and greatly increase consistency in application of this key part of the Act.

Resource Protection — Standards and procedures for the protection of river-related resources, particularly on Wild & Scenic rivers containing little or no federal lands, are not well defined in the Act and have been subject to various interpretations. This uncertainty results in controversy in wild and scenic river planning and administration. Based on the need to develop consistent, practical approaches towards resource protection, a paper is being developed on this issue that describes the Act's resource protection mandate, provides guidance for setting resource protection standards, and presents examples of actual approaches that have been used on a variety of Wild & Scenic rivers.

Who Manages Our Rivers — Many federal land managers have found themselves in the position of resolving conflicts created in Wild & Scenic river corridors by actions on non-federal lands. This is particularly evident as states continue to define their trust responsibilities on submerged lands of navigable rivers administered by the states. The Council is developing a paper which reviews several landmark cases that establishes the federal government's authority and responsibility to exercise certain powers on submerged lands. This legal and historical perspective will provide managers at least a brief understanding of the issues involved in jointly managed rivers and a legal understanding of "who manages our rivers."

(story continued on page 4)

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Water Quantity and Quality — As a national effort to balance hydropower and other river development, the Act declares it to be the policy of the United States to preserve certain rivers in their "free-flowing conditions and to protect the water quality of such rivers." The Act addresses, both expressly and by implication, protection of water flows and quality of designated rivers. Due to the complexity of this issue and the need for specific guidelines relating water resource issues to the Wild & Scenic Rivers Act, a paper is being developed to define the water resources issues, provide background to the legal, technical, and administrative aspects of water management, and outline suggested processes to determine in stream flow and water quality needs.

Questions and Answers — To help inform and educate river managers about the complex provisions of the Act, the Council is preparing a compendium of questions and answers (Q&As) gathered from a vast number of sources, including concerned citizens, Council meetings, river conservation organizations, and federal, state and local agencies. The intent is to provide a flexible tool that offers an accurate interpretation of literally hundreds of questions. The Q&A is designed as a living document constantly improved through use and application. It a being formatted to facilitate the ease of locating questions and to allow supplementation of answers or creation of new Q&As based on additional experience, case law, and site-specific examples and illustration.

How to Contact the Council

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Wild & Scenic Rivers Act

An Act[1]
To provide for a National Wild and Scenic Rivers System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that

SECTION 1. (a) This Act may be cited as the "Wild and Scenic Rivers Act."

(b) It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.

(c) The purpose of this Act is to implement this policy by instituting a national wild and scenic rivers system, by designating the initial components of that system, and by prescribing the methods by which and standards according to which additional components may be added to the system from time to time.

SECTION 2. (a) The national wild and scenic rivers system shall comprise rivers

(i) that are authorized for inclusion therein by Act of Congress, or

(ii) that are designated as wild, scenic or recreational rivers by or pursuant to an act of the legislature of the State or States through which they flow, that are to be permanently administered as wild, scenic or recreational rivers by an agency or political subdivision of the State or States concerned, that are found by the Secretary of the Interior, upon application of the Governor of the State or the Governors of the States concerned, or a person or persons thereunto duly appointed by him or them, to meet the criteria established in this Act and such criteria supplementary thereto as he may prescribe, and that are approved by him for inclusion in the system, including, upon application of the Governor of the State concerned, the Allagash Wilderness Waterway, Maine; that segment of the Wolf River, Wisconsin, which flows through Langlade

[1] The Wild and Scenic Rivers Act (16 U.S.C. 1271-1287) as set forth herein consists of Public Law 90-542 (October 2, 1968) and amendments thereto.

County and that segment of the New River in North Carolina extending from its confluence with Dog Creek downstream approximately 26.5 miles to the Virginia State line.

Upon receipt of an application under clause (ii) of this subsection, the Secretary shall notify the Federal Energy Regulatory Commission and publish such application in the Federal Register. Each river designated under clause (ii) shall be administered by the State or political subdivision thereof without expense to the United States other than for administration and management of federally owned lands. For purposes of the preceding sentence, amounts made available to any State or political subdivision under the Land and Water Conservation [Fund] Act of 1965 or any other provision of law shall not be treated as an expense to the United States. Nothing in this subsection shall be construed to provide for the transfer to, or administration by, a State or local authority of any federally owned lands which are within the boundaries of any river included within the system under clause (ii).

(b) A wild, scenic or recreational river area eligible to be included in the system is a free-flowing stream and the related adjacent land area that possesses one or more of the values referred to in Section 1, subsection (b) of this Act. Every wild, scenic or recreational river in its free-flowing condition, or upon restoration to this condition, shall be considered eligible for inclusion in the national wild and scenic rivers system and, if included, shall be classified, designated, and administered as one of the following:

(1) Wild river areas -- Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.

(2) Scenic river areas -- Those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.

(3) Recreational river areas -- Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past.

SECTION 3. (a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

[List of designated rivers omitted. Please see following list.]

(b) The agency charged with the administration of each component of the national wild and scenic rivers system designated by subsection (a) of this section shall, within one year from the date of designation of such component under subsection (a) (except where a different date

is provided in subsection (a)), establish detailed boundaries therefore (which boundaries shall include an average of not more than 320 acres of land per mile measured from the ordinary high water mark on both sides of the river); and determine which of the classes outlined in section 2, subsection (b), of this Act best fit the river or its various segments. Notice of the availability of the boundaries and classification, and of subsequent boundary amendments shall be published in the Federal Register and shall not become effective until ninety days after they have been forwarded to the President of the Senate and the Speaker of the House of Representatives.

(c) Maps of all boundaries and descriptions of the classifications of designated river segments, and subsequent amendments to such boundaries, shall be available for public inspection in the offices of the administering agency in the District of Columbia and in locations convenient to the designated river.

(d)(1) For rivers designated on or after January 1, 1986, the Federal agency charged with the administration of each component of the National Wild and Scenic Rivers System shall prepare a comprehensive management plan for such river segment to provide for the protection of the river values. The plan shall address resource protection, development of lands and facilities, user capacities, and other management practices necessary or desirable to achieve the purposes of this Act. The plan shall be coordinated with and may be incorporated into resource management planning for affected adjacent Federal lands. The plan shall be prepared, after consultation with State and local governments and the interested public within 3 full fiscal years after the date of designation. Notice of the completion and availability of such plans shall be published in the Federal Register.

(2) For rivers designated before January 1, 1986, all boundaries, classifications, and plans shall be reviewed for conformity within the requirements of this subsection within 10 years through regular agency planning processes.

SECTION 4. (a) The Secretary of the Interior or, where national forest lands are involved, the Secretary of Agriculture or, in appropriate cases, the two Secretaries jointly shall study and submit to the President reports on the suitability or nonsuitability for addition to the national wild and scenic rivers system of rivers which are designated herein or hereafter by the Congress as potential additions to such system. The President shall report to the Congress his recommendations and proposals with respect to the designation of each such river or section thereof under this Act. Such studies shall be completed and such reports shall be made to the Congress with respect to all rivers named in subparagraphs 5(a) (1) through (27) of this Act no later than October 2, 1978. In conducting these studies the Secretary of the Interior and the Secretary of Agriculture shall give priority to those rivers

(i) with respect to which there is the greatest likelihood of developments which, if undertaken, would render the rivers unsuitable for inclusion in the national wild and scenic rivers system, and

(ii) which possess the greatest proportion of private lands within their areas. Every such study and plan shall be coordinated with any water resources planning involving the same river which is being conducted pursuant to the Water Resources Planning Act (79 Stat. 244; 42 U.S.C. 1962 et seq.). Each report, including maps and illustrations, shall show among other things the area included within the report; the characteristics which do or do not make the area a worthy addition to the system; the current status of land ownership and use in the area; the reasonably foreseeable potential uses of the land and water which would be enhanced, foreclosed, or curtailed if the area were included in the national wild and scenic rivers system; the Federal agency (which in the case of a river which is wholly or substantially within a national forest, shall be the Department of Agriculture) by which it is proposed the area, should it be added to the system, be administered; the extent to which it is proposed that such administration, including the costs thereof, be shared by State and local agencies; and the estimated cost to the United States of acquiring necessary lands and interests in land and of administering the area, should it be added to the system. Each such report shall be printed as a Senate or House document.

(b) Before submitting any such report to the President and the Congress, copies of the proposed report shall, unless it was prepared jointly by the Secretary of the Interior and the Secretary of Agriculture, be submitted by the Secretary of the Interior to the Secretary of Agriculture or by the Secretary of Agriculture to the Secretary of the Interior, as the case may be, and to the Secretary of the Army, the Chairman of the Federal Power Commission, the head of any other affected Federal department or agency and, unless the lands proposed to be included in the area are already owned by the United States or have already been authorized for acquisition by Act of Congress, the Governor of the State or States in which they are located or an officer designated by the Governor to receive the same. Any recommendations or comments on the proposal which the said officials furnish the Secretary or Secretaries who prepared the report within ninety days of the date on which the report is submitted to them, together with the Secretary's or Secretaries' comments thereon, shall be included with the transmittal to the President and the Congress.

(c) Before approving or disapproving for inclusion in the national wild and scenic rivers system any river designated as a wild, scenic or recreational river by or pursuant to an act of the State legislature, the Secretary of the Interior shall submit the proposal to the Secretary of Agriculture, the Secretary of the Army, the Chairman of the Federal Power Commission, and the head of any other affected Federal department or agency and shall evaluate and give due weight to any recommendations or comments which the said officials furnish him within ninety days of the date on which it is submitted to them. If he approves the proposed inclusion, he shall publish notice thereof in the Federal Register.

(d) The boundaries of any river proposed in section 5(a) of this Act for potential addition to the National Wild and Scenic Rivers System shall generally comprise that area measured within one-quarter mile from the ordinary high water mark on each side of the river. In the case of any designated river, prior to publication of boundaries pursuant to section 3(b) of this Act, the boundaries also shall comprise the same area. This subsection shall not be construed to limit the possible scope of the study report to address areas which may lie more than one-quarter mile from the ordinary high water mark on each side of the river.

SECTION 5. (a) The following rivers are hereby designated for potential addition to the national wild and scenic rivers system:

[List of study rivers and study periods is omitted. If you need the list, please contact a Council member.]

(c) The study of any of said rivers shall be pursued in as close cooperation with appropriate agencies of the affected State and its political subdivisions as possible, shall be carried on jointly with such agencies if request for such joint study is made by the State, and shall include a determination of the degree to which the State or its political subdivisions might participate in the preservation and administration of the river should it be proposed for inclusion in the national wild and scenic rivers system.

(d)(1) In all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential national wild, scenic and recreational river areas, and all river basin and project plan reports submitted to the Congress shall consider and discuss any such potentials. The Secretary of the Interior and the Secretary of Agriculture shall make specific studies and investigations to determine which additional wild, scenic and recreational river areas within the United States shall be evaluated in planning reports by all Federal agencies as potential alternative uses of the water and related land resources involved.

(2) The Congress finds that the Secretary of the Interior, in preparing the Nationwide Rivers Inventory as a specific study for possible additions to the National Wild and Scenic Rivers System, identified the Upper Klamath River from below the John Boyle Dam to the Oregon-California State line. The Secretary, acting through the Bureau of Land Management, is authorized under this subsection to complete a study of the eligibility and suitability of such segment for potential addition to the National Wild and Scenic Rivers System. Such study shall be completed, and a report containing the results of the study shall be submitted to Congress by April 1, 1990. Nothing in this paragraph shall affect the authority or responsibilities of any other Federal agency with respect to activities or action on this segment and its immediate environment.

SECTION 6. (a)(1) The Secretary of the Interior and the Secretary of Agriculture are each authorized to acquire lands and interests in land within the authorized boundaries of any component of the national wild and scenic rivers system designated in section 3 of this Act, or hereafter designated for inclusion in the system by Act of Congress, which is administered by him, but he shall not acquire fee title to an average of more than 100 acres per mile on both sides of the river. Lands owned by a State may be acquired only by donation or by exchange in accordance with the subsection (d) of this section. Lands owned by an Indian tribe or a political subdivision of a State may not be acquired without the consent of the appropriate governing body thereof as long as the Indian tribe or political subdivision is following a plan for management and protection of the lands which the Secretary finds protects the land and assures its use for purposes consistent with this Act. Money appropriated for Federal purposes from the land and water conservation fund shall, without prejudice to the use of appropriations from other sources, be available to Federal departments and agencies for the acquisition of property for the purposes of this Act.

(2) When a tract of land lies partially within and partially outside the boundaries of a component of the National Wild and Scenic Rivers System, the appropriate Secretary may, with the consent of the landowners for the portion outside the boundaries, acquire the entire tract. The land or interest therein so acquired outside the boundaries shall not be counted against the average one-hundred-acre-per-mile fee title limitation of subsection (a)(1). The lands or interests therein outside such boundaries, shall be disposed of, consistent with existing authorities of law, by sale, lease, or exchange.

(b) If 50 per centum or more of the entire acreage outside the ordinary high water mark on both sides of the river within a federally administered wild, scenic or recreational river area is owned in fee title by the United States, by the State or States within which it lies, or by political subdivisions of those States, neither Secretary shall acquire fee title to any lands by condemnation under authority of this Act. Nothing contained in this section, however, shall preclude the use of condemnation when necessary to clear title or to acquire scenic easements or such other easements as are reasonably necessary to give the public access to the river and to permit its members to traverse the length of the area or of selected segments thereof.

(c) Neither the Secretary of the Interior nor the Secretary of Agriculture may acquire lands by condemnation, for the purpose of including such lands in any national wild, scenic or recreational river area, if such lands are located within any incorporated city, village or borough which has in force and applicable to such lands a duly adopted, valid zoning ordinance that conforms with the purposes of this Act. In order to carry out the provisions of this subsection the appropriate Secretary shall issue guidelines, specifying standards for local zoning ordinances, which are consistent with the purposes of this Act. The standards specified in such guidelines shall have the object of (A) prohibiting new commercial or industrial uses other than commercial or industrial uses which are consistent with the purposes of this Act, and (B) the protection of the bank lands by means of acreage, frontage, and setback requirements on development.

(d) The appropriate Secretary is authorized to accept title to non-Federal property within the authorized boundaries of any federally administered component of the national wild and scenic rivers system designated in section 3 of this Act or hereafter designated for inclusion in the system by Act of Congress and, in exchange therefore, convey to the grantor any federally owned property which is under his jurisdiction within the State in which the component lies and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal or, if they are not approximately equal, shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(e) The head of any Federal department or agency having administrative jurisdiction over any lands or interests in land within the authorized boundaries of any federally administered component of the national wild and scenic rivers system designated in section 3 of this Act or hereafter designated for inclusion in the system by Act of Congress is authorized to transfer to the appropriate Secretary jurisdiction over such lands for administration in accordance with the provisions of this Act. Lands acquired by or transferred to the Secretary of Agriculture for the purposes of this Act within or adjacent to a national forest shall upon such acquisition or transfer become national forest lands.

(f) The appropriate Secretary is authorized to accept donations of lands and interests in land, funds, and other property for use in connection with his administration of the national wild and scenic rivers system.

(g)(1) Any owner or owners (hereinafter in this subsection referred to as "owner") of improved property on the date of its acquisition, may retain for themselves and their successors or assigns a right of use and occupancy of the improved property for noncommercial residential purposes for a definite term not to exceed twenty-five years, or in lieu thereof, for a term ending at the death of the owner, or the death of his spouse, or the death of either or both of them. The owner shall elect the term to be reserved. The appropriate Secretary shall pay to the owner the fair market value of the property on the date of such acquisition less the fair market value on such a date retained by the owner.

(2) A right of use and occupancy retained pursuant to this subsection shall be subject to termination whenever the appropriate Secretary is given reasonable cause to find that such use and occupancy is being exercised in a manner which conflicts with the purposes of this Act. In the event of such a finding, the Secretary shall tender to the holder of that right an amount equal to the fair market value of that portion of the right which remains unexpired on the date of termination. Such right of use or occupancy shall terminate by operation of law upon tender of the fair market price.

(3) The term "improved property," as used in this Act, means a detached, one-family dwelling (hereinafter referred to as "dwelling"), the construction of which was begun before January 1, 1967, (except where a different date is specifically provided by law with respect to any particular river), together with so much of the land on which the dwelling is situated, the said

land being in the same ownership as the dwelling, as the appropriate Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use, together with any structures accessory to the dwelling which are situated on the land so designated.

SECTION 7. (a) The Federal Power Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act (41 Stat. 1063), as amended (16 U.S.C. 791a et seq.), on or directly affecting any river which is designated in section 3 of this Act as a component of the national wild and scenic rivers system or which is hereafter designated for inclusion in that system, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on the date of designation of a river as a component of the National Wild and Scenic Rivers System. No department or agency of the United States shall recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration, or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior or the Secretary of Agriculture, as the case may be, in writing of its intention so to do at least sixty days in advance, and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this Act and would effect the component and the values to be protected by it under this Act. Any license heretofore or hereafter issued by the Federal Power Commission affecting the New River of North Carolina shall continue to be effective only for that portion of the river which is not included in the National Wild and Scenic Rivers System pursuant to section 2 of this Act and no project or undertaking so licensed shall be permitted to invade, inundate or otherwise adversely affect such river segment.

(b) The Federal Power Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, as amended, on or directly affecting any river which is listed in section 5, subsection (a), of this Act, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river might be designated, as determined by the Secretary responsible for its study or approval --

(i) during the ten-year period following enactment of this Act or for a three complete fiscal year period following any Act of Congress designating any river for potential addition to the national wild and scenic rivers system, whichever is later, unless, prior to the expiration of the relevant period, the Secretary of the Interior and where national forest lands are involved, the Secretary of Agriculture, on the basis of study, determine that such river should not be included in the national wild and scenic rivers system and notify the Committees on Interior and Insular Affairs of the United States Congress, in writing, including a copy of the study upon which the determination was made, at least one hundred and eighty days while Congress is in session prior to publishing notice to that effect in the Federal Register: *Provided*, That if any Act designating any river or rivers for potential addition to the national wild and scenic rivers system provides a period for the study or studies which exceeds such three complete fiscal year period the period provided for in such Act shall be substituted for the three complete fiscal year period in the provisions of this clause (i); and

(ii) during such interim period from the date a report is due and the time a report is actually submitted to the Congress; and

(iii) during such additional period thereafter as, in the case of any river the report for which is submitted to the President and the Congress for inclusion in the national wild and scenic rivers system, is necessary for congressional consideration thereof or, in the case of any river recommended to the Secretary of the Interior under section 2(a)(ii) of this Act, is necessary for the secretary's consideration thereof, which additional period, however, shall not exceed three years in the first case and one year in the second.

Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a potential wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or diminish the scenic, recreational, and fish and wildlife values present in the potential wild, scenic or recreational river area on the date of designation of a river for study as provided in section 5 of this Act. No department or agency of the United States shall, during the periods hereinbefore specified, recommend authorization of any water resources project on any such river or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture in writing of its intention so to do at least sixty days in advance of doing so and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this Act and would affect the component and the values to be protected by it under this Act.

(c) The Federal Power Commission and all other Federal agencies shall, promptly upon enactment of this Act, inform the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture, of any proceedings, studies, or other activities within their

jurisdiction which are now in progress and which affect or may affect any of the rivers specified in section 5, subsection (a), of this Act. They shall likewise inform him of any such proceedings, studies, or other activities which are hereafter commenced or resumed before they are commenced or resumed.

(d) Nothing in this section with respect to the making of a loan or grant shall apply to grants made under the Land and Water Conservation Fund Act of 1965 (78 Stat. 897; 16 U.S.C. 4601-5 et seq.).

SECTION 8. (a) All public lands within the authorized boundaries of any component of the national wild and scenic rivers system which is designated in section 3 of this Act or which is hereafter designated for inclusion in that system are hereby withdrawn from entry, sale, or other disposition under the public land laws of the United States. This subsection shall not be construed to limit the authorities granted in section 6(d) or section 14A of this Act.

(b) All public lands which constitute the bed or bank, or are within one-quarter mile of the bank, of any river which is listed in section 5, subsection (a), of this Act are hereby withdrawn from entry, sale, or other disposition under the public land laws of the United States for the periods specified in section 7, subsection (b), of this Act. Notwithstanding the foregoing provisions of this subsection or any other provision of this Act, subject only to valid existing rights, including valid Native selection rights under the Alaska Native Claims Settlement Act, all public lands which constitute the bed or bank, or are within an area extending two miles from the bank of the river channel on both sides of the river segments referred to in paragraphs (77) through (88) of section 5(a) are hereby withdrawn from entry, sale, State selection or other disposition under the public land laws of the Unites States for the periods specified in section 7(b) of this Act.

SECTION 9. (a) Nothing in this Act shall affect the applicability of the United States mining and mineral leasing laws within components of the national wild and scenic rivers system except that --

(i) all prospecting, mining operations, and other activities on mining claims which, in the case of a component of the system designated in section 3 of this Act, have not heretofore been perfected or which, in the case of a component hereafter designated pursuant to this Act or any other Act of Congress, are not perfected before its inclusion in the system and all mining operations and other activities under a mineral lease, license, or permit issued or renewed after inclusion of a component in the system shall be subject to such regulations as the Secretary of the Interior or, in the case of national forest lands, the Secretary of Agriculture may prescribe to effectuate the purposes of this Act;

(ii) subject to valid existing rights, the perfection of, or issuance of a patent to, any mining claim affecting lands within the system shall confer or convey a right or title only to the mineral deposits and such rights only to the use of the surface and the surface resources as are reasonably required to carrying on prospecting or mining operations and are consistent with such regulations as may be prescribed by the Secretary of the Interior, or in the case of national forest lands, by the Secretary of Agriculture; and

(iii) subject to valid existing rights, the minerals in Federal lands which are part of the system and constitute the bed or bank or are situated within one-quarter mile of the bank of any river designated a wild river under this Act or any subsequent Act are hereby withdrawn from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto.

Regulations issued pursuant to paragraphs (i) and (ii) of this subsection shall, among other things, provide safeguards against pollution of the river involved and unnecessary impairment of the scenery within the components in question.

(b) The minerals in any Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river which is listed in section 5, subsection (a) of this Act are hereby withdrawn from all forms of appropriation under the mining laws during the periods specified in section 7, subsection (b) of this Act. Nothing contained in this subsection shall be construed to forbid prospecting or the issuance of leases, licenses, and permits under the mineral leasing laws subject to such conditions as the Secretary of the Interior and, in the case of national forest lands, the Secretary of Agriculture find appropriate to safeguard the area in the event it is subsequently included in the system. Notwithstanding the foregoing provisions of this subsection or any other provision of this Act, all public lands which constitute the bed or bank, or are within an area extending two miles from the bank of the river channel on both sides of the river segments referred to in paragraphs (77) through (88) of section 5(a), are hereby withdrawn, subject to valid existing rights, from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto, during the periods specified in section 7(b) of this Act.

SECTION 10. (a) Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its esthetic, scenic, historic, archaeologic, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes of the area.

(b) Any portion of a component of the national wild and scenic rivers system that is within the national wilderness preservation system, as established by or pursuant to the Act of

September 3, 1964 (78 Stat. 890; 16 U.S.C., ch. 23), shall be subject to the provisions of both the Wilderness Act and this Act with respect to preservation of such river and its immediate environment, and in case of conflict between the provisions of these Acts the more restrictive provisions shall apply.

(c) Any component of the national wild and scenic rivers system that is administered by the Secretary of the Interior through the National Park Service shall become a part of the national park system, and any such component that is administered by the Secretary through the Fish and Wildlife Service shall become a part of the national wildlife refuge system. The lands involved shall be subject to the provisions of this Act and the Acts under which the national park system or national wildlife refuge system, as the case may be, is administered, and in case of conflict between the provisions of these Acts, the more restrictive provisions shall apply. The Secretary of the Interior, in his administration of any component of the national wild and scenic rivers system, may utilize such general statutory authorities relating to areas of the national park system and such general statutory authorities otherwise available to him for recreation and preservation purposes and for the conservation and management of natural resources as he deems appropriate to carry out the purposes of this Act.

(d) The Secretary of Agriculture, in his administration of any component of the national wild and scenic rivers system area, may utilize the general statutory authorities relating to the national forests in such manner as he deems appropriate to carry out the purposes of this Act.

(e) The Federal agency charged with the administration of any component of the national wild and scenic rivers system may enter into written cooperative agreements with the Governor of a State, the head of any State agency, or the appropriate official of a political subdivision of a State for State or local governmental participation in the administration of the component. The States and their political subdivisions shall be encouraged to cooperate in the planning and administration of components of the system which include or adjoin State-or county-owned lands.

SECTION 11. (a) The Secretary of the Interior shall encourage and assist the states to consider, in formulating and carrying out their comprehensive statewide outdoor recreation plans and proposals for financing assistance for State and local projects submitted pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897), needs and opportunities for establishing State and local wild, scenic and recreational river areas.

(b)(1) The Secretary of the Interior, the Secretary of Agriculture, or the head of any other Federal agency, shall assist, advise, and cooperate with States or their political subdivisions, landowners, private organizations, or individuals to plan, protect, and manage river resources. Such assistance, advice and cooperation may be through written agreements or otherwise. This

authority applies within or outside a federally administered area and applies to rivers which are components of the National Wild and Scenic Rivers System and to other rivers. Any agreement under this subsection may include provisions for limited financial or other assistance to encourage participation in the acquisition, protection, and management of river resources.

(2) Wherever appropriate in furtherance of this Act, the Secretary of Agriculture and the Secretary of the Interior are authorized and encouraged to utilize the following:

(A) For activities on federally owned land, the Volunteers in the Parks Act of 1969 (16 U.S.C. 18g-j) and the Volunteers in the Forest Act of 1972 (16 U.S.C. 558a-558d).

(B) For activities on all other lands, section 6 of the Land and Water Conservation Fund Act of 1965 (relating to the development of statewide comprehensive outdoor recreation plans).

(3) For purposes of this subsection, the appropriate Secretary or the head of any Federal agency may utilize and make available Federal facilities, equipment, tools and technical assistance to volunteers and volunteer organizations, subject to such limitations and restrictions as the appropriate Secretary or the head of any Federal agency deems necessary or desirable.

(4) No permit or other authorization provided for under provision of any other Federal law shall be conditioned on the existence of any agreement provided for in this section.

SECTION 12. (a) The Secretary of the Interior, the Secretary of Agriculture, and the head of any other Federal department or agency having jurisdiction over any lands which include, border upon, or are adjacent to, any river included within the National Wild and Scenic Rivers System or under consideration for such inclusion, in accordance with section 2(a)(ii), 3(a), or 5(a), shall take such action respecting management policies, regulations, contracts, plans, affecting such lands, following the date of enactment of this sentence, as may be necessary to protect such rivers in accordance with the purposes of this Act. Such Secretary or other department or agency head shall, where appropriate, enter into written cooperative agreements with the appropriate State or local official for the planning, administration, and management of Federal lands which are within the boundaries of any rivers for which approval has been granted under section 2(a)(ii). Particular attention shall be given to scheduled timber harvesting, road construction, and similar activities which might be contrary to the purposes of this Act.

(b) Nothing in this section shall be construed to abrogate any existing rights, privileges, or contracts affecting Federal lands held by any private party without the consent of said party.

(c) The head of any agency administering a component of the national wild and scenic rivers system shall cooperate with the Administrator, Environmental Protection Agency and with the appropriate State water pollution control agencies for the purpose of eliminating or diminishing the pollution of waters of the river.

SECTION 13. (a) Nothing in this Act shall affect the jurisdiction or responsibilities of the States with respect to fish and wildlife. Hunting and fishing shall be permitted on lands and waters administered as parts of the system under applicable State and Federal laws and regulations unless, in the case of hunting, those lands or waters are within a national park or monument. The administering Secretary may, however, designate zones where, and establish periods when, no hunting is permitted for reasons of public safety, administration, or public use and enjoyment and shall issue appropriate regulations after consultation with the wildlife agency of the State or States affected.

(b) The jurisdiction of the States and the United States over waters of any stream included in the national wild, scenic or recreational river area shall be determined by established principles of law. Under the provisions of this Act, any taking by the United States of a water right which is vested under either State or Federal law at the time such river is included in the national wild and scenic rivers system shall entitle the owner thereof to just compensation. Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(c) Designation of any stream or portion thereof as a national wild, scenic or recreational river area shall not be construed as a reservation of the waters of such streams for purposes other than those specified in this Act, or in quantities greater than necessary to accomplish these purposes.

(d) The jurisdiction of the States over waters of any stream included in a national wild, scenic or recreational river area shall be unaffected by this Act to the extent that such jurisdiction may be exercised without impairing the purposes of this Act or its administration.

(e) Nothing contained in this Act shall be construed to alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by any States which contain any portion of the national wild and scenic rivers system.

(f) Nothing in this Act shall affect existing rights of any State, including the right of access, with respect to the beds of navigable streams, tributaries, or rivers (or segments thereof) located in a national wild, scenic or recreational river area.

(g) The Secretary of the Interior or the Secretary of Agriculture, as the case may be, may grant easements and rights-of-way upon, over, under, across, or through any component of the national wild and scenic rivers system in accordance with the laws applicable to the national park system and the national forest system, respectively: *Provided*, That any conditions precedent to granting such easements and rights-of-way shall be related to the policy and purpose of this Act.

SECTION 14. The claim and allowance of the value of an easement as a charitable contribution under section 170 of title 26, United States Code, or as a gift under section 2522 of said title shall constitute an agreement by the donor on behalf of himself, his heirs, and assigns that, if the terms of the instrument creating the easement are violated, the donee or the United States may acquire the servient estate at its fair market value as of the time the easement was donated minus the value of the easement claimed and allowed as a charitable contribution or gift.

SECTION 14A. (a) Where appropriate in the discretion of the Secretary, he may lease federally owned land (or any interest therein) which is within the boundaries of any component of the National Wild and Scenic Rivers system and which has been acquired by the Secretary under this Act. Such lease shall be subject to such restrictive covenants as may be necessary to carry out the purposes of this Act.

(b) Any land to be leased by the Secretary under this section shall be offered first for such lease to the person who owned such land immediately before its acquisition by the United States.

SECTION 15. Notwithstanding any other provision to the contrary in sections 3 and 9 of this Act, with respect to components of the National Wild and Scenic Rivers System in Alaska designated by paragraphs (38) through (50) of section 3(a) of this Act --

(1) the boundary of each such river shall include an average of not more than six hundred and forty acres per mile on both sides of the river. Such boundary shall not include any lands owned by the State or a political subdivision of the State nor shall such boundary extend around any private lands adjoining the river in such manner as to surround or effectively surround such private lands; and

(2) the withdrawal made by paragraph (iii) of section 9(a) shall apply to the minerals in Federal lands which constitute the bed or bank or are situated within one-half mile of the bank of any river designated a wild river by the Alaska National Interest Lands Conservation Act.

SECTION 16. As used in this Act, the term --

(a) "River" means a flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes.

(b) "Free-flowing," as applied to any river or section of a river, means existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modifi-cation of the waterway. The existence, however, of low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the national wild and scenic

rivers system shall not automatically bar its consideration for such inclusion: *Provided*, That this shall not be construed to authorize, intend, or encourage future construction of such structures within components of the national wild and scenic rivers system.

(c) "Scenic easement" means the right to control the use of land (including the air space above such land) within the authorized boundaries of a component of the wild and scenic rivers system, for the purpose of protecting the natural qualities of a designated wild, scenic or recreational river area, but such control shall not affect, without the owner's consent, any regular use exercised prior to the acquisition of the easement. For any designated wild and scenic river, the appropriate Secretary shall treat the acquisition of fee title with the reservation of regular existing uses to the owner as a scenic easement for purposes of this Act. Such an acquisition shall not constitute fee title ownership for purposes of section 6(b).

SECTION 17. There are hereby authorized to be appropriated, including such sums as have heretofore been appropriated, the following amounts for land acquisition for each of the rivers described in section 3(a) of this Act:

Clearwater, Middle Fork, Idaho, $2,909,800;
Eleven Point, Missouri, $10,407,000;
Feather, Middle Fork, California, $3,935,700;
Rio Grande, New Mexico, $253,000;
Rogue, Oregon, $15,147,000
St. Croix, Minnesota and Wisconsin, $21,769,000;
Salmon, Middle Fork Idaho, $1,837,000; and
Wolf Wisconsin, $142,150.

federal register

Tuesday
September 7, 1982

Part VII

Department of the Interior

Office of the Secretary
National Park Service

Department of Agriculture

Office of the Secretary
Forest Service

National Wild and Scenic Rivers System; Final Revised Guidelines for Eligibility, Classification and Management of River Areas

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Park Service

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Forest Service

National Wild and Scenic Rivers System; Final Revised Guidelines for Eligibility, Classification and Management of River Areas

AGENCY: National Park Service and Office of the Secretary, Interior; Forest Service and Office of the Secretary, USDA.

ACTION: Publication of final revised guidelines.

FOR FURTHER INFORMATION CONTACT: Bob Brockwehl (NPS), 202/272-3566.
William R. Snyder (USFS), 202/382-8014.

SUPPLEMENTARY INFORMATION: Guidelines for the study of potential national wild and scenic rivers and management of designated rivers were first issued jointly by the Department of Agriculture and the Department of the Interior in 1970. On January 28, 1981 draft revised guidelines were published in the **Federal Register** for public comment (Vol. 46, No. 18, pp. 9148-9158). The document which follows was prepared after consideration of 50 letters of comment received from other Federal agencies, State governments, private industry, citizens' groups and individuals. Major comments and responses are summarized below. Many of the comments received were not addressed because they related to aspects of the wild and scenic rivers program beyond the scope of these guidelines. (See Preface of the revised guidelines.)

Comments and Responses

Comment: The definition of the term outstandingly remarkable value is too vague and too liberal. Too many rivers will be eligible for designation, unreasonably constraining economic development of natural resources. *Response:* Balancing of the need for protection versus development of each river area will be considered by the Congress in deciding whether or not to designate the river area. A determination that a particular river is eligible for designation does not necessarily imply that designation is the best use of the river in terms of the national interest.

Comment: The guidelines give inadequate emphasis to public involvement in the study process. *Response:* Public involvement is sufficiently addressed in the context of environmental statements or assessments prepared in the study process.

Comment: The guidelines do not make sufficiently clear which of the management principles apply to private lands. *Response:* The guidelines may be unclear to the general reader in this respect. The managment principles are to be implemented throughout each river area to the fullest extent possible under the managing agency's general statutory authorities and other existing Federal, State and local laws, including zoning ordinances where available. Some management principles obviously apply only to Federal lands within the river area. For instance, the Wild and Scenic Rivers Act does not open private lands to public recreation. Management principles may apply to private lands only to the extent required by other laws such as local zoning and air and water pollution regulations.

Comment: Restriction of timber harvest to selective harvest techniques is unnecessarily limiting from both the timber production and the natural resource preservation standpoints. *Response:* The guidelines have been amended in accordance with this comment.

Comment: Specific guidance contained in the 1970 guideline with respect to the granting of rights-of-way for transmission lines is omitted from the revised draft guidelines. *Response:* The subsection on rights-of-way has been amended in accordance with this comment.

Comment: A protected study area extending one half mile from each bank of the river is excessive when the final boundaries of a river area must average no more than one quarter mile from each bank (320 acres per mile). *Response:* The half-mile figure was intended to ensure that all areas likely to be included within the boundaries of a designated river area would be considered in the study process. Setting a study boundary based on the "visual corridor" concept was considered but rejected. The one-quarter-mile figure was finally selected to avoid unnecessary limitations on resource developments. Some developments which may be initiated beyond the one-quarter-mile boundary during the study period might be affected in the future if the area under development is included in the boundaries of the river area designated by Congress.

Comment: Evaluation of the study area in its existing condition for classification purposes does not allow for the fact that a forest area growing in relatively natural condition at the time of the study may be scheduled for clearcutting at some future date. The classification process should allow for authorized and scheduled future uses which could change the condition and, thus, the classification of the river area. *Response:* The guidelines have been amended to permit consideration of alternative classifications for the river area where authorized future uses could alter classification.

The following additional changes were made in response to suggestions from the reviewing public or from reviewers within the responsible agencies.

- Unnecessary definitions were deleted.
- Quotations and paraphrases of the Wild and Scenic River Act (including the whole of Section II—Policy) were eliminated as much as possible. Instead, the guidelines will reference the appropriate sections of the Act where necessary.
- The entire subsection titled "Findings and Recommendations" and portions of the subsection titled "General Management Principles" were deleted and their content was placed in other appropriate sections.

Additional copies of the guidelines, the Wild and Scenic Rivers Act, as amended, and further information on the National Wild and Scenic Rivers System may be obtained from: National Park Service, Rivers and Trails Division (780), 440 G Street, N.W., Washington, D.C. 20243.

Dated: July 12, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks (Interior).

Dated: August 26, 1982.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment (Agriculture).

Department of Agriculture

Department of the Interior

National Wild and Scenic Rivers System

Guidelines for Eligibility, Classification and Management of River Areas.

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The Wild and Scenic Rivers Act [Pub. L. 90–542 as amended through Pub. L. 96–487]

Preface

The National Wild and Scenic Rivers System

The Wild and Scenic Rivers Act, (Pub. L. 90–542 as amended; 16 U.S.C. 1271–1287) established a method for providing Federal protection for certain of our country's remaining free-flowing rivers, preserving them and their immediate environments for the use and enjoyment of present and future generations. Rivers are included in the system so that they may benefit from the protective management and control of development for which the Act provides.

The preamble of the Act states:

> It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.

Addition of Rivers to the System

The Wild and Scenic Rivers Act provides two methods for adding a river to the National Wild and Scenic Rivers System. The first method is by an act of Congress. Congress can designate a river directly or it can authorize a river for study as a potential wild, scenic or recreational river. Upon completion of a study conducted by the Department of the Interior or the Department of Agriculture, a study report is prepared and transmitted to the President who, in turn, forwards it with his recommendations to Congress for action.

The second method for inclusion of a river in the national system is through the authority granted to the Secretary of the Interior in section 2(a)(ii) of the Act. Upon application by the Governor or Governors of the State or States involved, the Secretary can designate a river as a component of the national system provided that the river has been designated as a wild, scenic or recreational river by or pursuant to an act of the legislature of the State or States through which if flows to be permanently administered as a wild, scenic, or recreational river by an agency or political subdivision of the State or States concerned.

To be eligible for inclusion in the system through either method, rivers must meet certain criteria set forth in section 2(b) of the Act. Procedures for proposing State-administered rivers for designation have been issued by the Department of the Interior.

The Guidelines

Subsequent to enactment of the Wild and Scenic Rivers Act in October 1968, the Departments of Agriculture and the Interior initiated studies of twenty-seven rivers which the Act authorized for study as potential additions to the National Wild and Scenic Rivers System. As these studies progressed, it became evident that specific requirements of the Act concerning the evaluation, classification and management of these rivers were subject to differing interpretations within and between the two departments.

It was therefore agreed that a uniform evaluation and management approach should be formulated for use by the two departments, and through a cooperative effort, *Guidelines for Evaluating Wild, Scenic and Recreational River Areas Proposed for Inclusion in the National Wild and Scenic Rivers System Under Section 2, Public Law 90–542* was prepared and promulgated in February 1970.

The guidelines not only provide guidance for the congressionally mandated studies under section 5(a) of the Act, but are also useful for evaluations conducted by water resource development agencies under section 5(d) and for States applying for inclusion of State-designated rivers in the national system.

Revision of the Guidelines

While these guidelines were effective throughout a decade, it became clear that revision was necessary to incorporate changes identified through use and to reflect requirements of new laws and regulations. Therefore, on August 2, 1979, the President directed in his Environmental Message that "the Secretary of Agriculture and the Secretary of the Interior shall jointly revise their guidelines for evaluating wild, scenic and recreational rivers to ensure consideration of river ecosystems and to shorten the time currently used to study rivers for designation."

This revision of the guidelines has been prepared in response to the President's 1979 directive and includes:

- Clarification of the fact that free-flowing rivers which contain outstandingly remarkable ecological values are eligible for addition to the national system.
- Clarification of the fact that free-flowing river segments in or near urban areas that possess outstandingly remarkable values are eligible for addition to the national system.
- Elimination of the 25-mile minimum length guideline.
- Revision of the definition of sufficient river flow or volume of water in the river. Sufficient flow was not defined in the Act and the definition in the existing guidelines was unnecessarily limiting.
- Revised water quality guidelines to allow inclusion in the system of rivers where restoration to high water quality is planned.
- A revised section on management of designated river areas.
- A study schedule to accelerate completion of the river studies authorized by Congress.

Section I—Definitions

The following definitions are provided for the purpose of these guidelines only.

Act: The Wild and Scenic Rivers Act.

Carrying capacity: The quantity of recreation use which an area can sustain without adverse impact on the outstandingly remarkable values and free-flowing character of the river area, the quality of recreation experience, and public health and safety.

Classification criteria: Criteria specified in Section 2(b) of the Act for determining the classification (wild, scenic or recreational) of eligible river segments.

Classification: The process of determining which of the classes outlined in section 2(b) of the Act (wild, scenic, or recreational) best fit the river or its various segments.

Component: A river area designated as a unit of the National Wild and Scenic Rivers System.

Designation: Inclusion of a river area in the national system either by act of Congress or by authority of the Secretary of the Interior.

Development: Any manmade structure or modification of the natural or existing river environment.

Eligibility: Qualification of a river for inclusion in the national system through determination that it is free-flowing and with its adjacent land area possesses at least one outstandingly remarkable value.

Flow: The volume of water in a river passing a given point in a given period of time, usually expressed in terms of cubic feet per second or cubic meters per second.

Impoundment: A body of water formed by any manmade structure.

Management plan: The detailed development plan required under section 3(b) of the Act which states the boundaries and classification of the river area and presents a plan for its public use, development and administration.

Primary contact recreation: Activities in which there is prolonged and intimate contact with the water, (e.g., swimming, water skiing, surfing, kayaking, "tubing," and wading or dabbling by children.

River area: For a river study, that portion of a river authorized by Congress for study and its immediate environment comprising an area extending at least one-quarter mile from each bank. For designated rivers, the river and adjacent land within the authorized boundaries.

Secondary contact recreation: Activities in which contact with the water is either incidental or accidental, e.g., boating, fishing and limiting contact with water incident to shoreline activities.

Study agency: The agency within the Department of Agriculture or the Department of the Interior delegated the responsibility for a wild and scenic river study.

Study report: The report on the suitability or nonsuitability of a study river for inclusion in the national system, which section 4(a) requires the Secretary of Agriculture, or the Secretary of the Interior, or both jointly to prepare and submit to the President. The President transmits the report with his recommendation to the Congress.

Study team: A team of professionals from interested local, State and Federal agencies invited by the study agency and participating in the study.

Section II—The River Study

The Study Process

Section 4(a) mandates that all rivers designated as potential additions to the system in section 5(a) be studied as to their suitability for inclusion in the system:

> The Secretary of the Interior or, where national forest lands are involved, the Secretary of Agriculture or, in appropriate cases, the two Secretaries jointly shall study and submit to the President reports on the suitability or nonsuitability for addition to the national wild and scenic rivers system of rivers which are designated herein or hereafter by the Congress as potential additions to such system. The President shall report to the Congress his recommendations and proposals with respect to the designation of each such river or section thereof under this Act.

The purpose of a wild and scenic river study is to provide information upon which the President can base his recommendation and Congress can make a decision. Procedures for developing the necessary information and preparing the study report may vary depending on the agency which conducts the study, but generally will include the steps shown on Table 1, Accelerated Study Schedule.

Wild and scenic river studies will comply with all applicable statutes and executive orders, which may include the following: the National Environmental Policy Act (Pub. L. 91–190), the National Historic Preservation Act (Pub. L. 89–665), the Endangered Species Act (Pub. L. 93–205), the Fish and Wildlife Coordination Act (Pub. L. 85–264), the Water Resources Planning Act (Pub. L. 89–80), the Floodplain and Wetlands Executive Orders (E.O. 11988 and E.O. 11990), the National Forest Management Act of 1976 (Pub. L. 94–588), the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579), the Wild and Scenic Rivers Act, (Pub. L. 90–542, as amended), and any rules and regulations issued pursuant thereto.

The Study Report

Each river study report will be a concise presentation of the information required in sections 4(a) and 5(c) of the Act as augmented by the Council on Environmental Quality regulations implementing the procedural provisions of the National Environmental Policy Act (40 CFR Parts 1500–1508).

Section 4(a):

> Each report, including maps and illustrations, shall show among other things the area included within the report; the characteristics which do or do not make the area a worthy addition to the system; the current status of land ownership and use in the area; the reasonably foreseeable potential uses of the land an water which woud be enhanced, foreclosed or curtailed if the area were included in the national wild and scenic rivers system; the Federal agency (which in the case of a river which is wholly or substantially within a national forest, shall be the Department of Agriculture) by which it is proposed the area, should it be added to the system, be administered; the extent to which it is proposed that such administration, including the costs thereof, be shared by State and local agencies; and the estimated cost to the United States of acquiring necessary lands and interests in land and of administering the area, should it be added to the system.

In addition, section 5(c) requires that

> The study of any of said rivers * * * shall include a determination of the degree to which the State or its political subdivisions might participate in the preservation and administration of the river should it be proposed for inclusion in the national wild and scenic rivers system.

Study reports may be combined with draft and final environmental impact statements (EIS) as permitted by § 1506.4 of the Council on Environmental Quality regulations. Study reports will be reviewed by other Federal agencies, states and the public as requried by section 4(b) of the Wild and Scenic Rivers Act. Each of the following subsections describes the way in which the information is generated, analyzed and presented in the report.

Description of the River Areo

Each report will contain a description of the area included in the study. The study area will cover, as a minimum, an area extending the length of the river segment authorized for study and extending in width one-quarter mile from each bank of the river.

Adjacent river areas beyond one quarter mile form each river bank may be studied if their inclusion could facilitate management of the resources of the river area. For example, there may be important historic, archeological or ecological resource areas which may extend beyond the boundaries of the mandated study area, but could be better managed by inclusion in the river area. Also, management of the river area may be facilitated by extension to include established or available access points not included in the study.

For the purposes of study and determining eligibility and classification, the river area may be divided into segments.

The description of the river area will identify the outstandingly remarkable values and the extent of man's activity in the river environment to provide a clear basis for findings of eligibility and classification. While only one

outstandingly remarkable value is necessary for eligibility, the study report should carefully document all values of the river area.

In addition to the information required by Sections 4(a) and 5(c) of the Act, this section of the report will describe any existing zoning ordinances or other provisions of law governing land use in the study area.

If the study report and the environmental impact statement are combined, the same chapter may describe both the river area and the affected environment. For EIS purposes and for general information, a brief description of the regional setting will also be included.

Determination of Eligibility

Each report will contain a determination as to the eligibility of all portions of the authorized study area.

Section 2(b) of the Act states that "a * * * river area eligible to be included in the system is a free-flowing stream and the related adjacent land area that posseses one or more of the values referred to in section 1, subsection (b) of this Act." The terms "river" and "free-flowing" are defined in section 16 of the act.

In reading and applying the criteria for eligibility, the following points are relevant:

- The fact that a river segment may flow between large impoundments will not necessarily preclude its designation. Such segments may qualify if conditions within the segment meet the criteria.
- Rivers or river segments in or near urban areas that possess outstandingly remarkable values may qualify. Only one outstandingly remarkable value is needed for eligibility.
- In addition to the specific values listed in Section 1(b) of the Act, other similar values, such as ecological, if outstandingly remarkable, can justify inclusion of a river in the national system.
- The determination of whether a river ara contains "outstandingly remarkable" values is a professional judgment on the part of the study team. The basis for the judgment will be documented in the study report.
- There are no specific requirements concerning the length or the flow of an eligible river segment. A river segment is of sufficient length if, when managed as a wild, scenic or recreational river area, the outstandingly remarkable values are protected. Flows are sufficient if they sustain or complement the outstandingly remarkable values for which the river would be designated.

Classification

Study reports will indicate the potential classification which best fits each eligible river segment as viewed in its existing condition. Section 2(b) of the Act states that rivers which are found eligible and included in the National Wild and Scenic Rivers Systems shall be classified as one of the following:

(1) Wild river areas—Those rivers or sections of rivers that are free of impoundments and generally inaccesible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.

These criteria are interpreted as follows:

a. "Free of impoundments." Wild river areas shall be free of impoundments.

b. "Generally inaccessible except by trail." Wild river areas will not contain roads, railroads, or other provisions for vehicular travel within the river area. The existence of a few inconspicuous roads leading to the boundary of the river area at the time of study will not necessarily bar wild river classification.

c. "Watersheds or shorelines essentially primitive." Wild river areas will show little or no evidence of human activity. Shorelines and watersheds within the river area should be essentially free of structures including such things as buildings, pipelines, powerlines, dams, pumps, generators, diversion works, rip-rap and other modifications of the waterway or adjacent land within the river corridor. The existence of a few inconspicuous structures, particularly those of historic or cultural value, at the time of study need not bar wild classification.

A limited amount of domestic livestock grazing or hay production may be considered "essentially primitive." There should be no row crops or ongoing timber harvest and the river area should show little or no evidence of past logging activities.

d. "Waters unpolluted." The water quality of a wild river will meet or exceed Federal criteria or federally approved State standards for aesthetics, for propagation of fish and wildlife normally adapted to the habitat of the stream, and for primary contact recreation except where exceeded by natural conditions.

(2) Scenic river areas—Those rivers or sections or rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.

These criteria are interpreted as follows:

a. "Free of impoundments." Scenic river areas will be free of impoundments.

b. "Shorelines or watersheds still largely primitive." To qualify for scenic classification, the rivers segment's shorelines and immediate environment should not show substantial evidence of human activity. The portion of the watershed within the boundary of the scenic river may have some discernible existing development. "Largely primitive" means that the shorelines and the immediate river environment still present an overall natural character, but that in places land may be developed for agricultural purposes. Row crops would be considered as meeting the test of "largely primitive," as would timber harvest and other resource use, providing such activity is accomplished without a substantial adverse effect on the natural appearance of the river or its immediate environment.

c. "Shorelines largely undeveloped" means that any structures or concentration of structures must be limited to relatively short reaches of the total area under consideration for designation as a scenic river area.

d. "Accessible in places by road" means that roads may reach the river area and occasionally bridge the river. The presence of short stretches of conspicuous or longer stretches of inconspicuous and well-screened roads or railroads will not necessarily preclude scenic river designation. In addition to the physical and scenic relationship of the free-flowing river area to roads or railroads, consideration should be given to the type of use for which such roads or railroads were constructed and the type of use which would occur within the proposed scenic river area.

(3) Recreational river areas—Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past.

These criteria are interpreted as follows:

a. "Readily accessible by road or railroad." River areas classified as recreational may contain existing parallel roads or railroads in close proximity to one or both banks of the river as well as bridge crossings and roads fording or ending at the river.

b. "Some development along their shorelines." Lands may have been developed for the full range of agricultural and forestry uses, may show evidence of past and ongoing timber

harvest, and may include some residential, commercial or similar development.

c. "Some impoundment or diversion in the past." There may be some existing impoundments, diversions and other modifications of the waterway having an impact on the river area. Existing low dams, diversion works, rip-rap and other minor structures will not bar recreational classification, provided the waterway remains generally natural and riverine in appearance.

The classification criteria are summarized in Table 2, appended to these guidelines.

There are several points which all participants and observers of the study process should bear in mind when reading and applying the classification criteria:

- It is important to understand each criterion, but it is more important to understand their collective intent. Each river segment and its immediate environment should be considered as a unit. The basis for classification is the degree of naturalness, or stated negatively, the degree of evidence of man's activity in the river area. The most natural rivers will be classified wild; those somewhat less natural, scenic, and those least natural, recreational.
- Generally, only conditions within the river area determine classification; however, occasionally conditions outside the river area, such as developments which could impact air and water quality, noise levels or scenic views within the river area, may influence classification.
- For the purpose of classification, a river area may be divided into segments. Each segment, considered as a whole, will conform to one of the classifications. In segmenting the river the study team should take into account the management strategies necessary to administer the entire river area and should avoid excessive segmentation.
- The Wild and Scenic Rivers Act provides no specific guidance on water quality for scenic and recreational rivers. However, the Clean Water Act has made it a national goal that all waters of the United States be made fishable and swimmable, and provides the legal means for upgrading water quality in any river which would otherwise be suitable for inclusion in the system. Therefore, rivers will not necessarily be excluded from the system because of poor water quality at the time study, provided a water quality improvement plan exists or is being developed in compliance with applicable State and Federal laws.
- Although each classification permits certain existing development, the criteria do not imply that additional inconsistent development is permitted in the future.
- The classification criteria provide uniform guidance for professional judgment, but they are not absolutes. It is not possible to formulate criteria so as to mechanically or automatically classify river areas. Therefore, there may occasionally be exceptions to some of the criteria. For example, if the study team finds that strict application of the statutory classification criteria would not provide the most appropriate classification for a specific river segment, the study report may recommend for congressional consideration an exception to the classification criteria.

Analysis of the Alternatives

To provide for decisionmaking and to satisfy the requirements of the National Environmental Policy Act, study reports will include an analysis of alternatives. The study team will develop an array of alternative plans encompassing all reasonable proposals for use of the river area including uses which may be incompatible with designation of the river area as a component of the national system. Where appropriate, alternative plans for the river area may be based on, but not limited to:

- Alternative managing agencies for the river area;
- Alternative protective measures other than national designation;
- Alternative uses of the area incompatible with designation as a component of the national system; and
- Alternative classifications for the river area. Occasionally there may be authorized but not yet constructed projects, which if constructed would alter the classification of the river area. In such cases, alternatives may be presented to permit consideration of the river area as it would be classified both with and without the authorized project. Authorized projects may include approved land management plans prepared by a Federal land management agency under its statutory authorities.

The study report will present at least one alternative plan calling for national designation through either Congressional or Secretarial designation of all eligible segments of the congressionally authorized study area.

If the study team finds a segment ineligible for designation as a component of the National Wild and Scenic Rivers System, but still worthy of protection, alternatives for State, local or private preservation may be presented, as well as protection under other Federal programs.

If areas adjacent to the study area have been studied and found eligible, the report may present alternatives which incorporate such areas into the river area proposed for designation. Such expansion of the original study area either in length or in width may be desirable to preserve and facilitate management of river ecosystems, historic or archeological areas or other special areas.

Section III—Management

Wild and scenic rivers shall be managed with plans prepared in accordance with the requirements of the Act, other applicable laws, and the following general management principles. Management plans will state: General principles for any land acquisition which may be necessary; the kinds and amounts of public use which the river area can sustain without impact to the values for which it was designated; and specific management measures which will be used to implement the management objectives for each of the various river segments and protect esthetic, scenic, historic, archeologic and scientific features.

If the classification or classifications determined in the management plan differ from those stated in the study report, the management plan will describe the changes in the existing condition of the river area or other considerations which required the change in classification.

General Management Principles

Section 10(a) states,

> Each component of the national wild and scenic rivers system shall be administered in such a manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its esthetic, scenic, historic, archeologic, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development on the special attributes of the area.

This section is interpreted as stating a nondegradation and enhancement policy for all designated river areas, regardless of classification. Each component will be managed to protect and enhance the values for which the river was designated, while providing for public

recreation and resource uses which do not adversely impact or degrade those values. Specific management strategies will vary according to classification but will always be designed to protect and enhance the values of the river area. Land uses and developments on private lands within the river area which were in existence when the river was designated may be permitted to continue. New land uses must be evaluated for their compatibility with the purposes of the Act.

The management principles which follow stem from section 10(a). Managing agencies will implement these principles to the fullest extent possible under their general statutory authorities and existing Federal, State and local laws. Because of these limitations, however, implementation of the principles may differ among and within components of the system depending on whether the land areas involved are federally, State, locally or privately owned.

Carrying Capacity. Studies will be made during preparation of the management plan and periodically thereafter to determine the quantity and mixture of recreation and other public use which can be permitted without adverse impact on the resource values of the river area. Management of the river area can then be planned accordingly.

Public Use and Access. Public use will be regulated and distributed where necessary to protect and enhance (by allowing natural recovery where resources have been damaged) the resource values of the river area. Public use may be controlled by limiting access to the river, by issuing permits, or by other means available to the managing agency through its general statutory authorities.

Basic Facilities. The managing agency may provide basic facilities to absorb user impacts on the resource. Wild river areas will contain only the basic minimum facilities in keeping with the "essentially primitive" nature of the area. If facilities such as toilets and refuse containers are necessary, they will generally be located at access points or at a sufficient distance from the river bank to minimize their intrusive impact. In scenic and recreational river areas, simple comfort and convenience facilities such as toilets, shelters, fireplaces, picnic tables and refuse containers are appropriate. These, when placed within the river area, will be judiciously located to protect the values of popular areas from the impacts of public use.

Major Facilities. Major public use facilities such as developed campgrounds, major visitor centers and administrative headquarters will, where feasible, be located outside the river area. If such facilities are necessary to provide for public use and/or to protect the river resource, and location outside the river area is infeasible, such facilities may be located within the river area provided they do not have an adverse effect on the values for which the river area was designated.

Motorized Travel. Motorized travel on land or water is generally permitted in wild, scenic and recreational river areas, but will be restricted or prohibited where necessary to protect the values for which the river area was designated.

Agricultural and Forestry Practices. Agricultural and forestry practices should be similar in nature and intensity to those present in the area at the time of designation. Generally, uses more intensive than grazing and hay production are incompatible with wild river classification. Rowcrop production and timber harvest may be practice in recreational and scenic river areas. Recreational river areas may contain an even larger range of agricultural and forestry uses. Timber harvest in any river area will be conducted so as to avoid adverse impacts on the river area values.

Other Resource Management Practices. Resource management practices will be limited to those which are necessary for protection, conservation, rehabilitation or enhancement of the river area resources. Such features as trail bridges, fences, water bars and drainage ditches, flow measurement devices and other minor structures or management practices are permitted when compatible with the classification of the river area and provided that the area remains natural in appearance and the practices or structures harmonize with the surrounding environment.

Water Quality. Consistent with the Clean Water Act, water quality in wild, scenic and recreational river areas will be maintained or, where necessary, improved to levels which meet Federal criteria or federally approved State standards for aesthetics and fish and wildlife propagation. River managers will work with local authorities to abate activities within the river area which are degrading or would degrade existing water quality.

Additional management principles stem from other sections of the Act as follows:

Land Acquisition: Section 6
Water Resource Development: Section 7
Mining: Section 9
Management of Adjacent Federal Lands: Section 12(a)
Hunting and Fishing: Section 13(a)
Water Rights: Section 13(b)–(f)
Rights-of-Way: Section 13(g)

The following policies are consistent with and supplement the management principles stated in the Act:

Land Use Controls. Existing patterns of land use and ownership should be maintained, provided they remain consistent with the purposes of the Act. Where land use controls are necessary to protect river area values, the managing agency will utilize a full range of land-use control measures including zoning, easements and fee acquisition.

Rights-of-Way. In the absence of reasonable alternative routes, new public utility rights-of-way on Federal lands affecting a Wild and Scenic River area or study area will be permitted. Where new rights-of-way are unavoidable, locations and construction techniques will be selected to minimize adverse effects on scenic, recreational, fish and wildlife and other values of the river area.

Other legislation applicable to the various managing agencies may also apply to wild and scenic river areas. Where conflicts exist between the provisions of the Wild and Scenic Rivers Act and other acts applicable to lands within the system, the more restrictive provisions providing for protection of the river values shall apply.

BILLING CODE 4310-70-M

TABLE 1.

ACCELERATED STUDY SCHEDULE

MONTHS

River Study Tasks	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
1. Organize study team Prepare study plan Public information meetings Scope critical issues																														
2. Resource Inventories (a) Study Bndry. Locations (b) River eligibility and classification evalu. (c) Literature search (d) Other agency contacts (e) Resource maps																														
3. Develop alternative (a) Prepare alternatives display (b) Public meetings on findings and alternat. (c) Analyze Public Input (d) Evaluate alternatives																														
4. Complete Preliminay Report/ DEIS																														
5. Review of Draft (a) Internal Review (b) Revise preliminary as needed (c) Prepare camera ready copy (d) Print Draft Report/EIS (e) Distribute for 90-day review (a) Public meetings or formal hearings during review																														
6. Analyze Review Input Revise draft as needed. Internal Review																														
7. Print Final Report																														
8. Secretary's decision and transmittal of report w/ recommendations to OMB																														
9. Executive review and transmittal to the Congress																														

This schedule does not take into account the possibility of delays due to Congressional concern, interagency or intradepartmental concerns or other possible outside influences that cannot be planned for.

TABLE 2.

CLASSIFICATION CRITERIA FOR WILD, SCENIC AND RECREATIONAL RIVER AREAS *

ATTRIBUTE	WILD	SCENIC	RECREATIONAL
Water Resources Development	Free of impoundment.	Free of impoundment.	Some existing impoundment or diversion. The existence of low dams, diversions or other modifications of the waterway is acceptable, provided the waterway remains generally natural and riverine in appearance.
Shoreline Development	Essentially primitive. Little or no evidence of human activity. The presence of a few inconspicuous structures, particularly those of historic or cultural value, is acceptable. A limited amount of domestic livestock grazing or hay production is acceptable. Little or no evidence of past timber harvest. No ongoing timber harvest.	Largely primitive and undeveloped. No substantial evidence of human activity. The presence of small communities or dispersed dwellings or farm structures is acceptable. The presence of grazing, hay production or row crops is acceptable. Evidence of past or ongoing timber harvest is acceptable, provided the forest appears natural from the riverbank.	Some development. Substantial evidence of human activity. The presence of extensive residential development and a few commercial structures is acceptable. Lands may have been developed for the full range of agricultural and forestry uses. May show evidence of past and ongoing timber harvest.
Accessibility	Generally inaccessible except by trail. No roads, railroads or other provision for vehicular travel within the river area. A few existing roads leading to the boundary of the river area is acceptable.	Accessible in places by road. Roads may occasionally reach or bridge the river. The existence of short stretches of conspicuous or longer stretches of inconspicuous roads or railroads is acceptable.	Readily accessible by road or railroad. The existence of parallel roads or railroads on one or both banks as well as bridge crossings and other river access points is acceptable.
Water Quality	Meets or exceeds Federal criteria or federally approved State standards for aesthetics, for propagation of fish and wildlife normally adapted to the habitat of the river, and for primary contact recreation (swimming) except where exceeded by natural conditions.	No criteria prescribed by the Wild and Scenic Rivers Act. The Federal Water Pollution Control Act Amendments of 1972 have made it a national goal that all waters of the United States be made fishable and swimmable. Therefore, rivers will not be precluded from scenic or recreational classification because of poor water quality at the time of their study, provided a water quality improvement plan exists or is being developed in compliance with applicable Federal and State laws.	

* Table to be used only in conjunction with text.

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RIVER MILEAGE CLASSIFICATIONS FOR COMPONENTS OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

River Present Units in the National System	Administering Agency	Miles by Classification *Wild*	*Scenic*	*Rec'l*	*Total Miles*
1. Middle Fork, Clearwater, Idaho (P.L. 90-542 -- October 2, 1968)	Forest Service	54	--	131	185
2. Eleven Point, Missouri (P.L. 90-542 -- October 2, 1968)	Forest Service	--	44.4	--	44.4
3. Feather, California (P.L. 90-542 -- October 2, 1968)	Forest Service	32.9	9.7	35	77.6
4. Rio Grande, New Mexico (P.L. 90-542 -- October 2, 1968)	Bureau of Land Management Forest Service	43.9 7.85	-- --	.25 .75	44.15 8.6
Rio Grande, New Mexico (P.L. 103-242 -- May 4, 1994)	Bureau of Land Management	--	12	--	12
Rio Grande, Texas (P.L. 95-625 -- November 10, 1978)	National Park Service	95.2	96	--	191.2
5. Rogue, Oregon (P.L. 90-542 -- October 2, 1968)	Bureau of Land Management Forest Service	21 13	-- 7.5	26 17	47 37.5
6. St. Croix, Minnesota & Wisconsin (P.L. 90-542 -- October 2, 1968)	National Park Service	--	181	19	200
St. Croix (lower), Minnesota & Wisconsin (P.L. 92-560 -- October 25, 1972)	National Park Service	--	12	15	27
St. Croix (lower), Minnesota & Wisconsin (Secretarial Designation -- June 17, 1976)	States of Minnesota and Wisconsin	--	--	25	25

RIVER MILEAGE CLASSIFICATIONS FOR COMPONENTS OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

River Present Units in the National System	Administering Agency	Miles by Classification *Wild*	*Scenic*	*Rec'l*	*Total Miles*
7. Middle Fork Salmon, Idaho (P.L. 90-542 -- October 2, 1968)	Forest Service	103	--	1	104
8. Salmon, Idaho (P.L. 96-312 -- July, 23 1980)	Forest Service	79	--	46	125
9. Wolf, Wisconsin (P.L. 90-542 -- October 2, 1968)	National Park Service	--	--	--	24
10. Allagash Wilderness Waterway, Maine (Secretarial Designation -- July, 19, 1970)	State of Maine	92.5	--	--	92.5
11. Little Miami, Ohio (Secretarial Designation -- August 20, 1973)	State of Ohio	--	18	--	66
Little Miami, Ohio (Secretarial Designation -- January 28, 1980)	State of Ohio	--	--	--	28
12. Chattooga, North and South Carolina, Georgia (P.L. 93-279 -- May 10, 1974)	Forest Service	39.8	2.5	14.6	66.9
13. Little Beaver, Ohio (Secretarial Designation -- October 23, 1975)	State of Ohio	--	--	--	33
14. Snake, Idaho and Oregon (P.L. 94-199 -- December 31, 1975)	Forest Service	32.5	34.4	46	66.9
15. Rapid, Idaho (P.L. 94-199 -- December 31, 1975)	Forest Service	26.8	--	--	26.8
16. New, North Carolina (Secretarial Designation -- April 13, 1976)	State of North Carolina	--	26.5	--	26.5

RIVER MILEAGE CLASSIFICATIONS FOR COMPONENTS OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

River Present Units in the National System	Administering Agency	Miles by Classification *Wild*	*Scenic*	*Rec'l*	*Total Miles*
17. Missouri, Montana (P.L. 94-486 -- October 12, 1976)	Bureau of Land Management	64	26	64	149
Missouri, Nebraska and South Dakota (P.L. 95-625 -- November 10, 1978)	National Park Service	--	--	--	59
Missouri, Nebraska and South Dakota (P.L. 102-50 -- May 24, 1991)	National Park Service	--	--	--	39
18. Flathead, Montana (P.L. 94-486 -- October 12, 1976)	Forest Service and National Park Service	97.9	40.7	80.4	219
19. Obed, Tennessee (P.L. 94-486 -- October 12, 1976)	National Park Service	44.25	--	.95	45.2
20. Pere Marquette, Michigan (P.L. 95-625 -- November 10, 1978)	Forest Service	--	66.4	--	66.4
21. Skagit, Washington (P.L. 95-625 -- November 10, 1978)	Forest Service	--	99	58.5	157.5
22. Delaware (upper), New York & Pennsylvania (P.L. 95-625 -- November 10, 1978)	National Park Service	--	25.1	50.3	75.4
Delaware (middle), New Jersey & Pennsylvania (P.L. 95-625 -- November 10, 1978)	National Park Service	--	35	--	35
23. American (North Fork), California (P.L. 95-625 -- November 10, 1978)	Forest Service Bureau of Land Management	26.3 12	-- --	-- --	26.3 12
24. American (lower), California (Secretarial Designation -- January 19, 1981)	State of California	--	--	23	23

River Present Units in the National System	Administering Agency	Miles by Classification *Wild*	*Scenic*	*Rec'l*	*Total Miles*
25. Saint Joe, Idaho (P.L. 95-625 -- November 10, 1978)	Forest Service	26.6	--	39.7	66.3
26. Alagnak, Alaska (P.L. 96-487 -- December 2, 1980)	National Park Service	67	--	--	67
27. Alatna, Alaska (P.L. 96-487 -- December 2, 1980)	National Park Service	83	--	--	83
28. Aniakchak, Alaska (P.L. 96-487 -- December 2, 1980)	National Park Service	63	--	--	63
29. Charley, Alaska (P.L. 96-487 -- December 2, 1980)	National Park Service	208	--	--	208
30. Chilikadrotna, Alaska (P.L. 96-487 -- December 2, 1980)	National Park Service	11	--	--	11
31. John, Alaska (P.L. 96-487 -- December 2, 1980)	National Park Service	52	--	--	52
32. Kobuk, Alaska (P.L. 96-487 -- December 2, 1980)	National Park Service	110	--	--	110
33. Mulchatna, Alaska (P.L. 96-487 -- December 2, 1980)	National Park Service	24	--	--	24
34. Koyukuk (North Fork), Alaska (P.L. 96-487 -- December 2, 1980)	National Park Service	102	--	--	102
35. Noatak, Alaska (P.L. 96-487 -- December 2, 1980)	National Park Service	330	--	--	330

RIVER MILEAGE CLASSIFICATIONS FOR COMPONENTS OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

River Present Units in the National System	Administering Agency	Miles by Classification *Wild*	*Scenic*	*Rec'l*	*Total Miles*
36. Salmon, Alaska (P.L. 96-487 -- December 2, 1980)	National Park Service	70	--	--	70
37. Tinayguk, Alaska (P.L. 96-487 -- December 2, 1980)	National Park Service	44	--	--	44
38. Tlikakila, Alaska (P.L. 96-487 -- December 2, 1980)	National Park Service	51	--	--	51
39. Andreafsky, Alaska (P.L. 96-487 -- December 2, 1980)	Fish and Wildlife Service	262	--	--	262
40. Ivishak, Alaska (P.L. 96-487 -- December 2, 1980)	Fish and Wildlife Service	80	--	--	80
41. Nowitna, Alaska (P.L. 96-487 -- December 2, 1980)	Fish and Wildlife Service	225	--	--	225
42. Selawik, Alaska (P.L. 96-487 -- December 2, 1980)	Fish and Wildlife Service	160	--	--	160
43. Sheenjek, Alaska (P.L. 96-487 -- December 2, 1980)	Fish and Wildlife Service	160	--	--	160
44. Wind, Alaska (P.L. 96-487 -- December 2, 1980)	Fish and Wildlife Service	140	--	--	140
45. Beaver Creek, Alaska (P.L. 96-487 -- December 2, 1980)	Fish and Wildlife Service Bureau of Land Management	16 111	-- --	-- --	16 111
46. Birch Creek, Alaska (P.L. 96-487 -- December 2, 1980)	Bureau of Land Management	126	--	--	126

RIVER MILEAGE CLASSIFICATIONS FOR COMPONENTS OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

River Present Units in the National System	Administering Agency	Miles by Classification *Wild*	*Scenic*	*Rec'l*	*Total Miles*
47. Delta, Alaska (P.L. 96-487 -- December 2, 1980)	Bureau of Land Management	20	24	18	62
48. Fortymile, Alaska (P.L. 96-487 -- December 2, 1980)	Bureau of Land Management	179	203	10	392
49. Gulkana, Alaska (P.L. 96-487 -- December 2, 1980)	Bureau of Land Management	181	--	10	181
50. Unalakleet, Alaska (P.L. 96-487 -- December 2, 1980)	Bureau of Land Management	80	--	--	80
51. Klamath, California (Secretarial Designation -- January 19, 1981)	State of California	--	3	41	44
	Forest Service	12	21	177.5	210.5
	Bureau of Land Management	--	--	1.5	1.5
	Hoopa Valley Indian Reservation	--	--	29	29
	National Park Service	--	--	1	1
Klamath, Oregon (Secretarial Designation -- September 22, 1994)	State of Oregon and Bureau of Land Management	--	11	--	11
52. Trinity, California (Secretarial Designation -- January 19, 1981)	State of California	2	11	24	37
	Forest Service	42	22	71	135
	Bureau of Land Management	--	--	17	17
	Hoopa Valley Indian Reservation	--	6	8	14

RIVER MILEAGE CLASSIFICATIONS FOR COMPONENTS OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

River Present Units in the National System	Administering Agency	Miles by Classification *Wild*	*Scenic*	*Rec'l*	*Total Miles*
53. Eel, California (Secretarial Designation -- January 19, 1981)	State of California Forest Service Bureau of Land Management Round Valley Indian Reservation	36 35 21 5	22.5 -- 4.5 1	250.5 -- 6.5 16	309 35 32 22
54. Smith, California (Secretarial Designation -- January 19, 1981) (P.L. 101-612 -- November 16, 1990)	State of California Forest Service	-- 78	.5 30.5	28.5 187.85	29 296.35
55. Verde, Arizona (P.L. 98-406 -- August 28, 1984)	Forest Service	17.9	22	--	40.5
56. Tuolumne, California (P.L. 98-425 -- September 28, 1984)	Forest Service National Park Service Bureau of Land Management	7 37 3	6 17 --	13 -- --	26 54 3
57. Au Sable, Michigan (P.L. 98-444 -- October 4, 1984)	Forest Service	--	23	--	23
58. Owyhee, Oregon (P.L. 98-494 -- October 19, 1984)	Bureau of Land Management	120	--	--	120
59. Illinois, Oregon (P.L. 98-494 -- October 19, 1984)	Forest Service	28.7	17.9	3.8	50.4
60. Loxahatchee, Florida (Secretarial Designation -- May 17, 1985)	State of Florida	1.25	5.75	.5	7.5
61. Horsepasture, North Carolina (P.L. 99-530 -- October 26, 1986)	Forest Service	--	3.6	.6	4.2

RIVER MILEAGE CLASSIFICATIONS FOR COMPONENTS OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

River Present Units in the National System	Administering Agency	Miles by Classification *Wild*	*Scenic*	*Rec'l*	*Total Miles*
62. Cache La Poudre, Colorado (P.L. 99-590 -- October 30, 1986)	Forest Service National Park Service	18 12	-- --	46 --	64 12
63. Black Creek, Mississippi (P.L. 99-590 -- October 30, 1986)	Forest Service	--	21	--	21
64. Saline Bayou, Louisiana (P.L. 99-590 -- October 30, 1986)	Forest Service	--	19	--	19
65. Klickitat, Washington (P.L. 99-663 -- November 17, 1986)	Forest Service	--	--	--	19
66. White Salmon, Washington (P.L. 99-663 -- November 17, 1986)	Forest Service	--	9	--	9
67. Merced, California (P.L. 100-149 -- November 2, 1987) (P.L. 102-432 -- October 23, 1992)	Forest Service National Park Service Bureau of Land Management	15 53 --	2 14 4	12.5 14 7.5	29.5 81 11.5
68. Kings, California (P.L. 100-150 -- November 3, 1987)	Forest Service National Park Service	16.5 49	-- --	9 6.5	25.5 55.5
69. Kern, California (P.L. 100-174 -- November 24, 1987)	Forest Service National Park Service	96.1 27	20.9 --	7 --	124 27
70. Wildcat Creek, New Hampshire (P.L. 100-554 -- October 28, 1988)	Forest Service	--	13.5	1	14.5
71. Sipsey Fork of the West Fork, Alabama (P.L. 100-547 -- October 28, 1988)	Forest Service	36.4	25	--	61.4
72. Big Marsh Creek, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	--	--	15	15

River Present Units in the National System	Administering Agency	Miles by Classification *Wild*	*Scenic*	*Rec'l*	*Total Miles*
73. Chetco, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	25.5	8	11	44.5
74. Clackamas, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	--	--	27	10
75. Crescent Creek, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	--	--	10	10
76. Crooked, Oregon (P.L. 100-557 -- October 28, 1988)	Bureau of Land Management	--	--	10	15
77. Deschutes, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service Bureau of Land Management	-- --	11 19	43.4 100	54.4 119
78. Donner und Blitzen, Oregon (P.L. 100-557 -- October 28, 1988)	Bureau of Land Management	72.7	--	--	72.7
79. Eagle Creek, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	4	6	17	27
80. Elk, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	2	--	--	10
81. Grande Ronde, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service Bureau of Land Management	17.4 9	-- --	1.5 15.9	18.9 24.9
82. Imnaha, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	15	4	58	77
83. John Day, Oregon (P.L. 100-557 -- October 28, 1988)	Bureau of Land Management	--	--	147.5	147.5

RIVER MILEAGE CLASSIFICATIONS FOR COMPONENTS OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

River Present Units in the National System	Administering Agency	Miles by Classification *Wild*	*Scenic*	*Rec'l*	*Total Miles*
84. Joseph Creek, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	8.6			8.6
85. Little Deschutes, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	39	--	--	12
86. Lostine, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	5	--	--	16
87. Malheur, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	--	7	6.7	13.7
88. McKenzie, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	--	--	12.7	12.7
89. Metolius, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	--	17.1	11.5	28.6
90. Minam, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	39	--	--	39
91. North Fork Crooked, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service Bureau of Land Management	-- 11.1	8 1.5	6.7 5	14.7 17.6
92. North Fork John Day, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	27.8	10.5	15.8	54.1
93. North Fork Malheur, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	--	25.5	--	25.5
94. North Fork of the Middle Fork of the Willamette, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	8.8	6.5	27	42.3

RIVER MILEAGE CLASSIFICATIONS FOR COMPONENTS OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

River Present Units in the National System	Administering Agency	Miles by Classification *Wild*	*Scenic*	*Rec'l*	*Total Miles*
95. North Fork Owyhee, Oregon (P.L. 100-557 -- October 28, 1988)	Bureau of Land Management	9.6	--	--	9.6
96. North Fork Smith, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	8.5	4.5	--	13
97. North Fork Sprague, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	--	15	--	15
98. North Powder, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	--	6	--	6
99. North Umpqua, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service Bureau of Land Management	-- --	-- --	25.4 8.4	25.4 8.4
100. Powder, Oregon (P.L. 100-557 -- October 28, 1988)	Bureau of Land Management	--	11.7	--	11.7
101. Quartzville Creek, Oregon (P.L. 100-557 -- October 28, 1988)	Bureau of Land Management	--	--	--	12
102. Roaring, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	13.5	--	.2	13.7
103. Salmon, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service Bureau of Land Management	15 --	-- 4.8	10.5 3.2	25.5 8
104. Sandy, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service Bureau of Land Management	4.5 --	-- 3.8	7.9 8.7	12.4 12.5
105. South Fork John Day, Oregon (P.L. 100-557 -- October 28, 1988)	Bureau of Land Management	--	--	47	47

RIVER MILEAGE CLASSIFICATIONS FOR COMPONENTS OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

River Present Units in the National System	Administering Agency	Miles by Classification *Wild*	*Scenic*	*Rec'l*	*Total Miles*
106. Squaw Creek, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	6.6	8.8	--	15.4
107. Sycan, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	--	50.4	8.6	59
108. Upper Rogue, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	6.1	34.2	--	40.3
109. Wenaha, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service	18.7	2.7	.15	21.55
110. West Little Owyhee, Oregon (P.L. 100-557 -- October 28, 1988)	Bureau of Land Management	57.6	--	--	57.6
111. White, Oregon (P.L. 100-557 -- October 28, 1988)	Forest Service Bureau of Land Management	-- --	6.5 17.5	15.6 6.9	22.1 24.4
112. Bluestone, West Virginia (P.L. 100-534 -- October 26, 1988)	National Park Service	--	10	--	10
113. Rio Chama, New Mexico (P.L. 100-633 -- November 7, 1988)	Forest Service Bureau of Land Management	-- 21.5	3.1 --	-- --	3.1 21.5
114. Middle Fork of the Vermilion, Illinois (Secretarial Designation -- May 11, 1989)	State of Illinois	--	17.1	--	17.1
115. East Fork of the Jemez, New Mexico (P.L. 101-306 -- June 6, 1990)	Forest Service	4	5	2	11
116. Pecos, New Mexico (P.L. 101-306 -- June 6, 1990)	Forest Service	13.5	--	7	20.5

RIVER MILEAGE CLASSIFICATIONS FOR COMPONENTS OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

River Present Units in the National System	Administering Agency	Miles by Classification *Wild*	*Scenic*	*Rec'l*	*Total Miles*
117. Clarks Fork of the Yellowstone, Wyoming (P.L. 101-628 -- November 28, 1990)	Forest Service	20.5	--	--	20.5
118. Niobrara, Nebraska (P.L. 102-50 -- May 24, 1991)	National Park Service and Fish and Wildlife Service	14	76	26	104
119. Bear Creek, Michigan (P.L. 102-249 -- March 3, 1992)	Forest Service	14	6.5	14	6.5
120. Black, Michigan (P.L. 102-249 -- March 3, 1992)	Forest Service	14	14	14	14
121. Carp, Michigan (P.L. 102-249 -- March 3, 1992)	Forest Service	12.4	9.3	6.1	27.8
122. Indian, Michigan (P.L. 102-249 -- March 3, 1992)	Forest Service	14	--	39	51
123. Manistee, Michigan (P.L. 102-249 -- March 3, 1992)	Forest Service	14	14	26	26
124. Ontonagon, Michigan (P.L. 102-249 -- March 3, 1992)	Forest Service	42.9	41	73.5	157.4
125. Paint, Michigan (P.L. 102-249 -- March 3, 1992)	Forest Service	--	--	51	51
126. Pine, Michigan (P.L. 102-249 -- March 3, 1992)	Forest Service	--	25	--	25
127. Presque Isle, Michigan (P.L. 102-249 -- March 3, 1992)	Forest Service	--	19	38	57

River Present Units in the National System	Administering Agency	Miles by Classification *Wild*	*Scenic*	*Rec'l*	*Total Miles*
128. Sturgeon, Michigan (Hiawatha National Forest) (P.L. 102-249 -- March 3, 1992)	Forest Service	--	21.7	22.2	43.9
129. Sturgeon, Michigan (Ottawa National Forest) (P.L. 102-249 -- March 3, 1992)	Forest Service	16.5	8.5	--	25
130. Tahquamenon, East Branch, Michigan (P.L. 102-249 -- March 3, 1992)	Forest Service	3.2	--	--	13.2
131. Whitefish, Michigan (P.L. 102-249 -- March 3, 1992)	Forest Service	--	31.5	2.1	33.6
132. Yellow Dog, Michigan (P.L. 102-249 -- March 3, 1992)	Forest Service	4	--	--	4
133. Allegheny, Pennsylvania (P.L. 102-271 -- April 20, 1992)	Forest Service	--	--	85	85
134. Big Piney, Arkansas (P.L. 102-275 -- April 22, 1992)	Forest Service	--	45.2	--	45.2
135. Buffalo River, Arkansas (P.L. 102-275 -- April 22, 1992)	Forest Service	9.4	9.4	--	15.8
136. Cossatot River, Arkansas (P.L. 102-275 -- April 22, 1992)	Forest Service Army Corps of Engineers State of Arkansas	-- -- --	11.3 4.6 10.7	4.2 -- --	15.5 4.6 10.7
137. Hurricane Creek, Arkansas (P.L. 102-275 -- April 22, 1992)	Forest Service	2.4	13.1	--	15.5
138. Little Missouri, Arkansas (P.L. 102-275 -- April 22, 1992)	Forest Service	4.4	11.3	--	15.7

River Present Units in the National System	Administering Agency	Miles by Classification *Wild*	*Scenic*	*Rec'l*	*Total Miles*
139. Mulberry, Arkansas (P.L. 102-275 -- April 22, 1992)	Forest Service	--	19.4	36.6	56
140. North Sylamore Creek, Arkansas (P.L. 102-275 -- April 22, 1992)	Forest Service	--	14.5	--	14.5
141. Richland Creek, Arkansas (P.L. 102-275 -- April 22, 1992)	Forest Service	5.3	11.2	--	16.5
142. Sespe Creek, California (P.L. 102-301 -- June 19, 1992)	Forest Service	28.9	4	--	31.5
143. Sisquoc River, California (P.L. 102-301 -- June 19, 1992)	Forest Service	33	--	--	33
144. Big Sur River, California (P.L. 102-301 -- June 19, 1992)	Forest Service	18.9	--	--	19.5
145. Great Egg Harbor River, New Jersey (P.L. 102-536 -- October 27, 1992)	National Park Service	--	30.6	98.4	129
146. Westfield, Massachusetts (Secretarial Designation -- November 2, 1993)	State of Massachusetts	--	18.9	24.4	43.3
147. Maurice, New Jersey (P.L. 103-162 -- December 1, 1993)	National Park Service	--	28.9	6.5	35.4
148. Red, Kentucky (P.L. 103-170 -- December 2, 1993)	Forest Service	9.1	--	10.3	19.4
149. Big and Little Darby Creeks, Ohio (Secretarial Designation -- March 10, 1994)	State of Ohio	--	85.9	--	85.9

RIVER MILEAGE CLASSIFICATIONS FOR COMPONENTS OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

River Present Units in the National System	Administering Agency	Miles by Classification *Wild*	*Scenic*	*Rec'l*	*Total Miles*
150. Farmington West Branch, Connecticut (P.L. 103-313 -- August 26, 1994)	National Park Service and State of Connecticut and Local Government	--	--	14	14
151. Wallowa, Oregon (Secretarial Designation -- July 23, 1996)	State of Oregon and Bureau of Land Management	--	--	10	10
152. Clarion, Pennsylvania (P.L. 104-314 -- October 19, 1996)	Forest Service	--	17.1	34.6	51.7
153. Lamprey, New Hampshire (P.L. 104-333 -- November 12, 1996)	National Park Service	--	--	11.5	11.5
154. Elkhorn Creek, Oregon (P.L. 104-333 -- November 12, 1996)	Forest Service Bureau of Land Management	5.8 --	-- .6	-- --	5.8 .6
TOTALS		**5,277.85**	**2,320.25**	**3,216.85**	**10,814.95**

Source: National Park Service, Division of Park Planning & Protection 202/208-4290.

A Compendium of Questions & Answers Relating to Wild & Scenic Rivers

A Living Draft

NATIONAL
WILD AND SCENIC
RIVERS SYSTEM

May 1997

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Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council

A Compendium of Questions & Answers Relating to Wild & Scenic Rivers

A Living Draft

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Acronyms & Abbreviations

ACOE	Army Corps of Engineers
Act	Wild and Scenic Rivers Act
BLM	Bureau of Land Management
CFR	Code of Federal Regulations
Council	Interagency Wild and Scenic Rivers Coordinating Council
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration
FERC	Federal Energy Regulatory Commission
FHWA	Federal Highway Administration
FR	Federal Register
Interagency Guidelines	*Department of the Interior and Agriculture Interagency Guidelines for Eligibility, Classification and Management of River Areas* published in the *Federal Register* (Vol. 47, No. 173; September 7, 1982, pp. 39454-39461) providing direction to agencies in the study and administration of wild and scenic rivers.
LEIS	Legislative Environmental Impact Statement
National System	National Wild and Scenic Rivers System
NEPA	National Environmental Policy Act
NPS	National Park Service
NRI	Nationwide Rivers Inventory
OMB	Office of Management and Budget
ORV	Outstandingly Remarkable Value
P.L.	Public Law
Q&A	Question and Answer
Reference Guide	*Interagency Wild & Scenic River Coordinating Council Reference Guide*
SCORP	State Comprehensive Outdoor Recreation Plan
USC	United States Code
USFS	United States Forest Service
USFWS	United States Fish and Wildlife Service
WSR	Wild and Scenic River

A Compendium of Questions & Answers Relating to Wild & Scenic Rivers

FOREWORD

The Wild and Scenic Rivers Act (Act), as amended, is one of the most important pieces of conservation law; however, the Act has complex provisions influencing the management of resources as varied as water quantity and quality, minerals, agriculture, livestock grazing, fisheries and recreation. Implementation and interpretation of the Act is further compounded by the range and diversity of administering jurisdictions and ownerships.

This compendium of questions and answers (Q&As) has been compiled by the Interagency Wild and Scenic Rivers Coordinating Council (Council). The compilation is derived from a number of sources, e.g., concerned citizens, river conservation organizations, and federal, state and local agencies and employees. It is designed to be of assistance to you in the accurate interpretation and application of the Act and in the management of the over 150 designated rivers in the National Wild and Scenic Rivers System (National System). If it does not provide all the information you need, please contact a Council member or the agency which administers a particular river.

This collection of Q&As is to both inform and educate all those involved with the inventory, study, and management of wild and scenic rivers (WSRs). ***It is intended to be a flexible, living document constantly improved through use and application.*** The primary focus is on solutions (consistent and correct answers) to questions and issues; however, this document cannot possibly deal with the limitless number of possible scenarios which might occur. The document is formatted so as to facilitate the addition of new questions, as well as to expand or supplement the existing answers through a variety of mechanisms, e.g., experience, interpretation, case law, and site-specific examples and illustrations. The examples provided may or may not be analogous to your situation and may require additional administrative and/or judicial review.

Some of the Q&As, e.g., those dealing with study procedures and management approaches, apply only to congressionally authorized studies or designations. Private and state lands along rivers managed by state and/or local governments, and designated pursuant to Section 2(a)(ii) of the Act, are managed under state/local authorities and plans. The federal government exercises no authority over state or private lands and has no authority to acquire them under Section 2(a)(ii).

In other words, not all of the Q&As presented here apply to Section 2(a)(ii) rivers, and, unless the Q&A specifically addresses Section 2(a)(ii), you should not assume it applies. The Council encourages you to check with the National Park Service to ensure that specific Q&As apply to Section 2(a)(ii) rivers.

These Q&As attempt to provide a generic framework in the context of the Act and do not supersede any adopted agency policy or guidelines. Agencies may use, or adopt, the principles or concepts stated herein. In addition, nothing precludes agencies from supplementing these Q&As with information or illustrations which are unique to field or site-specific situations.

Providing marked-up copies, edits, comments, and/or additional questions with the proposed answer is encouraged. Please send legible marked-up pages, Q&As needing change or correction, separate page narratives, or new Q&As to the address listed below. If you send a 3.5" formatted diskette, please use WordPerfect versions 5.1 or 6.0.

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OVERVIEW OF THE WILD & SCENIC RIVERS ACT

Section 1 -- Establishes the National System. States its purpose, lists eligibility criteria, identifies outstandingly remarkable values (ORVs) -- scenic, recreation, geologic, fish and wildlife, historic, cultural, or other similar values -- and the need to protect the free-flowing condition of rivers.

Declares a national policy to:

- Preserve certain rivers and their immediate environments.
- Maintain free-flowing condition (See Section 16 definitions).
- Protect water quality (Section 12).
- Fulfill other vital national conservation purposes.

Complements the national policy of dams and other natural resource development projects.

Section 2 -- Specifies two methods by which a river can be designated.

(a)(i) By Act of Congress, or

(a)(ii) By the Secretary of the Interior upon application of the governor(s) of a state(s). To be administered by an agency or political subdivision of a state at no expense to the federal government.

(b) Eligibility requirements:

- Free-flowing.
- Possess one or more ORV(s).

Defines criteria for classification, according to the level of development of the shoreline, watercourse, and access as:

- Wild,
- Scenic, and/or
- Recreational.

Section 3 -- Guidance on designated rivers.

(a) Lists congressionally designated rivers in the National System.

(b) Provides guidance on the establishment of boundaries for designated rivers, e.g., boundaries are limited to an average of no more than 320 acres per river mile, except double that in Alaska.

(c) Requires public notice of availability for river boundaries and classifications.

(d)(1) For rivers designated on or after January 1, 1986, requires preparation of a comprehensive management plan within three full fiscal years of designation. Notice of availability and completion of plans to be published in the *Federal Register*.

Plans shall address:

- Resource protection.
- Development of lands and facilities.
- User capacities.
- Other management practices necessary to achieve purposes of the Act.

Coordination:

- With land management plans for affected adjacent federal lands (typically incorporated).
- With state, local government, and interested publics.

(d)(2) For rivers designated prior to January 1, 1986, all boundaries, classifications, and plans shall be reviewed for conformity with Section 3 within ten years (i.e., prior to January 1, 1996) through regular agency planning processes.

Section 4 -- Provides directions for conducting studies, including study report requirements and processes; requires Secretarial and Presidential recommendations as to suitability; no timeframe, but generally there is a three-year limit.

(a) Each study report shall include:

- The area included in the report (map and illustrations).
- The characteristics which do or do not make the area a worthy addition.
- Current status of land ownership and use.
- The reasonably foreseeable potential uses of land and water which would be enhanced, foreclosed, or curtailed if designated.
- Proposed federal administering agency.
- Potential to share cost of administration with state and local agencies.
- Estimated cost to the government of acquisition and administration.

(b) Requires consultation with other affected federal agencies.

(c) Requires consultation with federal agencies before the Secretary of the Interior designates a state-administered river to the National System.

(d) Minimum of one-quarter mile study boundary.

Section 5 -- Study provisions.

(a) List of congressionally authorized studies.

(b) Study period usually three full fiscal years.

(c) Additional study requirements -- coordination with states and political subdivisions.

(d)(1) Directs federal agencies to consider other potential WSRs in their land and water resource planning process.

(d)(2) Specific language for the Upper Klamath River study, Oregon.

Section 6 -- Land acquisition procedures and limitations.

(a) The federal government may acquire land, and interests in lands, for rivers designated via Congress with certain restrictions:

- No more than an average of 100 acres per mile may be acquired in fee.
- State lands may be acquired by donation/exchange only.
- Tribal or land in a political subdivision can be acquired by consent only, so long as it is being protected for purposes of WSR status.

(b) Limitations on land condemnation.

- "50 percent rule" -- If over 50 percent of lands within a WSR boundary are in public ownership (federal/state/local government), no condemnation for fee title is allowed.

- The 50 percent rule does not apply when used to clear title, or to acquire conservation or use easements reasonably necessary to provide public access or resource protection.

(c) Authority to use land condemnation in incorporated city, village, or borough is preempted when local governments have in force zoning ordinances which protect river resources.

(d) Exchange authority with private interests.

(e) Transfer authority with other federal agencies.

(f) Authority to accept donations.

(g) Use and occupancy authorization.

Section 7 -- Restrictions on hydroelectric and water resource development projects on congressionally designated rivers, rivers added under Section 2(a)(ii) of the Act, and congressionally authorized study rivers.

(a) Prohibits the Federal Energy Regulatory Commission (FERC) licensing of new construction for hydropower projects on designated rivers; prohibits assistance for water resources projects by other federal agencies if the project would have:

- A direct or adverse effect, or
- Would invade or unreasonably diminish scenic, recreational, and fish and wildlife values present at the date of designation.

(b) Similar restrictions for Section 5(a) congressionally authorized study rivers.

Section 8 -- Land disposition.

(a) Designated rivers: Withdraws federal lands from entry, sale, or other disposition under public land laws.

(b) Congressionally authorized study rivers under Section 5(a): Language in Section 8(a) is applicable during the study period, which includes three years after the President sends the agency's report to Congress with a recommendation.

Section 9 -- Mining and mineral leasing laws; valid existing rights and reasonable access to working claims recognized.

(a) On designated rivers, exceptions subject to valid existing rights:

- Mining/leasing activities subject to regulations determined by a Secretary necessary to effectuate purposes of the Act.
- Patent to mineral deposits and rights to surface and surface resources.
- Withdrawal of bed/bank and one-quarter mile of any **wild** river from mining and mineral leasing laws.

"Regulations" shall provide safeguards against:

- Pollution.
- Unnecessary impairment of the scenery.

(b) For congressionally authorized study rivers under Section 5(a):

- Minerals within study area are withdrawn from appropriation under mining law for periods specified in Section 7(b).
- Prospecting and mineral leasing are allowed with appropriate conditions.

Section 10 -- Directs federal agencies to administer WSRs to protect and enhance the values for which the river was designated and authorizes the federal government to enter into written agreements with state and local governments (municipalities) to jointly manage rivers, e.g., the Great Egg Harbor River, New Jersey.

(a) Protect and enhance values for which the river was designated, i.e., ORVs, free-flowing nature, and water quality.

Primary emphasis on:

- Aesthetic.
- Scenic.
- Historic.
- Archaeological.
- Scientific features.

Management plans may establish varying degrees of intensity for protection and development based on special attributes.

(b) For rivers in designated wilderness, where there is conflict between the Wilderness Act and the WSR Act, the more restrictive provisions would apply.

(c) Rivers administered by the National Park Service (NPS) are part of the National Park System and rivers administer by the U.S. Fish and Wildlife Service (USFWS) are part of the National Wildlife Refuge System.

(d) The Secretary of Agriculture is authorized to use general statutory authorities relating to national forests when managing a WSR.

(e) Encourages state and local participation in protecting congressionally designated rivers. Authorizes federal administering agencies to enter into cooperative agreements for this purpose.

Section 11 -- Cooperation/Partnership.

Authorizes the Secretary of the Interior to encourage states to consider opportunities for state and local WSRs in formulation of the State Comprehensive Outdoor Recreation Plan (SCORP) and to assist, advise, and cooperate with landowners, organizations, and governments in the management of WSRs; agencies can look outside administrative boundaries.

(b)(1) Federal assistance. The Secretary of the Interior may "assist, advise and cooperate with states or their political subdivisions, landowners, private organizations or individuals to plan,

protect and manage river resources." Authority is within and outside a federally administered area and applies to rivers in the National System and other rivers.

Agreement may include limited financial or other technical assistance to encourage participation in acquisition, protection and management of river resources.

Section 12 -- Activities on federal lands.

Directs federal agencies to protect rivers in light of other policies which may be contrary to the Act and confirms that existing rights are not abrogated; directs river-administering agencies to cooperate with the Environmental Protection Agency (EPA) and appropriate state water pollution control agencies to eliminate or diminish the pollution of waters.

(a) Other federal agencies are to take such actions to protect lands which are included, border upon, or are adjacent to, congressionally designated and authorized study rivers in accordance with the Act, paying particular attention to timber harvest, road construction, and similar activities which may be contrary to purposes of the Act.

(b) Existing rights, privileges, or contracts may not be revoked without private party consent.

(c) Water pollution: Cooperate with EPA and appropriate state water pollution agencies.

Section 13 -- Jurisdiction of the states.

Confirms that the jurisdiction of the state with regard to hunting and fishing is not affected; discusses water rights, navigable waters, and other easements and rights of way; state rights to access to the beds of navigable rivers is unaffected.

(a) Fish and wildlife: Confirms state jurisdiction with regard to hunting and fishing except for no hunting zones for safety, administration, or public use.

(b) Water rights determined by established principles of law.

(c) Reservation of waters: Federal reserved water rights are reserved at the time of designation and retain enough water to protect the values for which the river was designated:

- For purposes specified in the Act, and
- In quantities to accomplish those purposes.

(d) Water use management: State jurisdiction unaffected to the "extent that such jurisdiction may be exercised without impairing purposes of this Act or its administration."

(e) Interstate compacts: Not affected.

(f) Navigability: Shall not affect existing rights of states with respect to access to beds of navigable rivers.

(g) Easements may be granted, and rights of way may be issued, as long as they are within the policy and purposes of the Act.

Section 14 -- Easements and leases.

Allows for contributions, i.e., donations of easements and real property to non-profit groups and the federal government.

Authorizes leasing of federal land within the corridor subject to appropriate conditions.

(A)(a) Lease of federally acquired land.

(A)(b) Former owner has right of first refusal.

Section 15 -- Exceptions for designated rivers in Alaska. (References the Alaska National Interest Lands Conservation Act.)

Doubles the amount of land permitted within the designated boundary, i.e., maximum of 640 acres per mile. State lands and local government lands may not be included within the boundary, nor can private lands be surrounded by the boundary to assure access. In addition, mineral withdrawals on federal lands in Alaska cover the bed and bank and everything within one-half mile of the river.

Section 16 -- Definition of terms: river, free-flowing, scenic easement.

(a) River can be: river, stream, creek, run, kill, rill, small lake.

(b) Free-flowing is flowing in natural condition without structural modification of the waterway; existence of minor structures is not an automatic ban.

(c) Scenic easement is the right to control the use of land to protect river values.

Section 17 -- Authorization of appropriations for land acquisition.

OVERVIEW OF THE WILD AND SCENIC RIVERS ACT - Q&As

The Act and the National System

Q. What is the genesis of the Act?

A. Due to the dams, diversions, and water resource development projects which occurred from the 1930's to the 1960's, the need for a national system of river protection was recognized by conservationists (notably Frank and John Craighead), congressional representatives such as Frank Church, and federal agencies. The Act was an outgrowth of a national conservation agenda of the 1950's and 1960's, captured in the 1962 recommendations of the Outdoor Recreation Resources Review Commission. The Act concluded that selected rivers be preserved in a free-flowing condition and be protected for the benefit and enjoyment of present and future generations.

Q. When was the Act passed?

A. The Act (Public Law 90-542; 16 U.S.C. 1271-1287) was enacted on October 2, 1968. It has been amended many times, primarily to designate additional rivers and authorize additional rivers for study for possible inclusion.

Q. What is the purpose of the Act and of designating rivers? How should these rivers be managed?

A. The Act provides a national policy and program to preserve and protect selected rivers, or segments of rivers, in their free-flowing condition in the National System. Section 1(b) of the Act states:

> *It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.*

Section 10(a) of the Act states:

> *Each component of the National Wild and Scenic Rivers System shall be administered in such manner as to protect and enhance the values which caused it to be included without . . . limiting other uses that do not substantially*

interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its aesthetic, scenic, historic, archaeologic, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes of the area.

Q. How many miles of river have been protected under the National System?

A. As of April 30, 1997, some 154 river segments comprising 10,815 miles have been afforded protection in the National System. These nationally recognized rivers comprise some of the nation's greatest diversity of recreational, natural and cultural resources, offering great scientific study value and scenic beauty. By contrast, approximately 600,000 miles of once free-flowing rivers have been inundated by about 60,000 dams.

Q. What are the primary effects of WSR designation?

A. WSR designation seeks to maintain and enhance a river's current natural condition and provide for public use consistent with retaining those values. Designation affords certain legal protection from adverse development, e.g., no new dams can be constructed, nor federally assisted water resource development projects allowed, which might adversely affect designated river values. Where private lands are involved, the federal managing agency will work with local governments and owners to develop protective measures, thereby avoiding land acquisition where possible. Mining and mineral leasing laws applicable to federal lands are affected in three major areas:

- Valid existing rights are not rescinded.
- Ongoing mining and mineral leasing are subject to regulations issued by the Secretaries of Agriculture and/or the Interior to protect water quality and scenic values.
- Subject to valid existing rights, patents are issued for the minerals and surface use only.
- Rivers classified as "wild" are withdrawn from the mining and mineral leasing laws.

The Study and Designation Process

Q. How are rivers designated?

A. There are two ways rivers are designated into the National System:

- *By Act of Congress.* Rivers designated by Congress are listed in Section 3(a) of the Act.

- *By the Secretary of the Interior.* The Secretary may designate a river; however, it must first be designated into a valid state river protective system by or pursuant to state law(s), and the appropriate governor(s) must apply. The Secretary must find the segment eligible using the same eligibility criteria as for congressionally authorized rivers and must determine that the state(s) or political subdivisions are providing adequate protection and have the resources for management. Applications by the states are evaluated and processed by the NPS.

Q. What is involved in management and planning for federally designated WSRs?

A. There are a number of interrelated aspects or components which federal agencies use in the management of WSRs:

- Determining final classification, if not determined by Congress upon designation.

- Developing final boundaries and maps.

- Developing the comprehensive, interdisciplinary WSR management plan which may address a variety of issues, e.g., resource protection and user capacities.

- Implementing the management plan in conformance with land-use planning objectives.

Q. Do the agencies encourage citizen involvement in the WSR study process?

A. Yes. Under Section 5(a) of the Act, the public is involved in the study of rivers authorized by Congress. The report associated with a congressionally authorized study will address subjects such as: current status of land ownership and use in the area; reasonably foreseeable potential uses of land and water which would be affected by designation; the appropriate federal agency to administer the river if designated; and the ability of, and estimated costs to, state and local agencies to participate in the administration of such rivers. The public and state, local and tribal governments help

assemble, evaluate data, and develop alternatives. With respect to studies under Section 5(a) of the Act, agencies, such as the NPS, assist local and state entities in the study process.

In response to Section 5(d)(1) of the Act, administering agencies also involve the public in the determination of potential WSRs through normal inventory and study processes. Starting with scoping meetings for appropriate agency planning documents, agencies discuss the inventory and study of rivers within their respective planning units. The public and state, local and tribal governments have the opportunity to discuss issues, concerns, river values, and associated impacts with agency personnel. As the process continues, similar discussions on the suitability of eligible rivers take place as determinations and environmental documents are prepared.

Q. Do the agencies encourage citizen involvement in the WSR management planning process?

A. Yes. The agencies serve the public in formulating river management plans. The public and state, local and tribal governments are essential participants in developing an acceptable plan that both protects and enhances the values for which the river was added to the National System.

Q. Why should one support WSR designation?

A. To protect and enhance the values for which a river may be designated. Many free-flowing rivers have been degraded, compromised by development, or require substantial restoration. The intent of the Act is to help focus management efforts to protect selected rivers and their associated values.

Q. How many potential WSRs are there?

A. Through the various federal agencies' land management planning processes, and initiatives by the public, a significant number of rivers have been identified for study as potential additions to the National System. For example, the Nationwide Rivers Inventory (NRI), maintained by the NPS, has identified over 2,600 river segments as potential candidates for study and/or inclusion into the National System.

Q. Have any designated WSRs ever been de-authorized?

A. No.

Q. Will the *Departments of the Interior and Agriculture Interagency Guidelines for Eligibility, Classification and Management of River Areas* (Interagency Guidelines; September 7, 1982, 47 FR 39454-39461) be revised, for example, to reflect the 1986 generic amendments to the Act?

A. Probably at some point. The Council periodically evaluates tasks to be undertaken.

Q. Why were the Interagency Guidelines for the WSRs program developed?

A. On September 7, 1982, the Departments of Agriculture and the Interior outlined in the *Federal Register* (47 FR 39454) eligibility and classification criteria, evaluation process and content, and reporting requirements for potential WSRs, and management guidelines for designated WSRs. These guidelines were formulated to provide a uniform evaluation and consistent management approach in the identification, evaluation, reporting and management of WSR segments. These replaced earlier guidelines which were developed in 1970.

INVENTORY AND ELIGIBILITY

Q. What qualifies a river as a WSR for the National System?

A. To be eligible for designation, a river must be free-flowing (not to be confused with 'naturally flowing' which is explained later) and contain at least one ORV, i.e., scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar value.

Q. When is a river or river segment evaluated for eligibility for possible inclusion in the National System?

A. There are three instances when federal agencies assess eligibility: 1) at the request of Congress through specific authorized studies; 2) through their respective agency planning processes; or 3) by the NPS evaluation of a Section 2(a)(ii) application. River areas identified through the inventory phase are evaluated for their free-flowing nature and must possess at least one ORV.

Q. What is the definition of "free-flowing?"

A. Section 16(b) of the Act defines free-flowing as, "existing or flowing in a natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway."

The existence of small dams, diversion works, or other minor structures shall not automatically disqualify a river as a potential addition to the National System. Congress did not intend all rivers to be "naturally flowing," i.e., flowing without any man-made up- or downstream manipulation. The presence of impoundments above and/or below the segment (including those which may regulate flow regimes within the segment), and existing minor dams or diversion structures within the study area, do not necessarily render a river segment non-eligible. There are segments in the National System which are downstream from major dams or are located between dams.

Q. How can a river below a dam or impoundment be considered "free-flowing?"

A. Section 16 the Act, defines a "river" as, ". . . a flowing body of water . . . or portion, section, or tributary thereof. . . ." "Free-flowing" is defined as, ". . . existing or flowing in natural condition without impoundment. . . ." Therefore, any section of river with flowing water meets the technical definition of free flowing, even if impounded upstream.

Q. Can a river be considered free-flowing when the flow is dependent on releases from a dam?

A. Yes. Congress and the Secretary of the Interior have designated many river segments which are above or below dams.

Q. What is the definition of "outstandingly remarkable value?"

A. In the Act, river values identified include scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values. The Act does not further define ORVs. Agency resource professionals develop and interpret criteria in evaluating river values (unique, rare, or exemplary) based on professional judgment on a regional, physiographic, or geographic comparative basis.

Q. What are possible "other similar" ORVs?

A. Examples of other similar ORVs include botanical, hydrological, paleontological, scientific, or heritage values.

Q. What types of watercourses qualify for WSR designation?

A. Section 16(b) of the Act defines a river as, "a flowing body of water or estuary, or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes."

Q. Must a river segment be of any particular length or be "boatable or floatable" in order to be eligible?

A. No.

Q. Can intermittent rivers be considered eligible?

A. Yes. For purposes of eligibility evaluation, the volume of flow is sufficient if it is enough to sustain or complement the ORVs identified within the segment. Rivers with intermittent or non-perennial flows exist within the National System and may be representative of rivers within particular physiographic regions.

Q. What is the Nationwide Rivers Inventory?

A. The NRI is a listing of free-flowing rivers (or river segments), which, based on preliminary studies, are considered to meet eligibility criteria for the National System.

From 1976 to 1980, the Bureau of Outdoor Recreation and the Heritage, Conservation, and Recreation Service compiled the initial NRI, which was subsequently updated, published, and first distributed by the NPS in January 1982. Additions have been made as a result of Bureau of Land Management (BLM) and U.S. Forest Service (USFS) inventories as a part of their land use planning process. The NRI is maintained and revised as necessary by the NPS. Listing on the NRI, or any other source list, does not represent an official determination of eligibility, and conversely, absence does not indicate a river's non-eligibility.

Q. What are some of the aspects or steps federal agencies go through in their evaluation of potential WSRs in their land management planning process?

A. There are a number of aspects which federal agencies use in their planning or evaluation process:

- Assessment of free-flowing condition and ORVs.
- Determination or finding of eligibility or non-eligibility.
- Inventoried or tentative classification based on the development of shoreline, watercourse, and access.
- Establishment of tentative, preliminary, or proposed boundaries and/or river areas.
- Establishment of protective management requirements for eligible rivers.

Q. What if one is not sure whether a particular river area should be evaluated pursuant to Section 5(d)(1) for possible eligibility determination?

A. It is important to develop and apply standardized criteria through a documented evaluation process which may include a screening for potential WSRs. If there is a doubt, evaluate it according to the criteria in the Act, i.e., free-flowing nature and ORVs.

Q. When is a river formally determined eligible or non-eligible?

A. Eligibility findings are made as a part of a congressionally authorized study under Section 5(a), or pursuant to Section 5(d)(1). For Section 2(a)(ii) rivers, the NPS will make an eligibility determination following application by the governor(s) for federal designation.

Q. What documentation is needed for eligibility determinations?

A. Agency land use or resource management records, document inventories, evaluations, analysis, recommendations and decisions are needed. Agency field offices retain the administrative record and documents related to an assessment of the free-flowing character and identification of ORVs.

Q. Must federal agencies make evaluations through their land use planning process for potential WSR segments listed on the NRI which flow on or through public lands?

A. Yes. The 1982 NRI did not determine a river's eligibility and was only a potential list of selected rivers. Federal agencies must make an eligibility determination for NRI rivers. If an NRI segment exists within an agency's planning unit, determinations shall be made as to the river's eligibility and suitability.

Q. Should federal agencies also consider the eligibility of other potential rivers not included in the NRI?

A. Yes. The federal agency should consider a wide variety of internal and external sources from which to identify potentially eligible rivers. These sources may include: American Rivers' "Outstanding Rivers List," statewide river inventories/assessments, published guide-books, etc. The important point is to develop and apply standardized criteria through a documented evaluation process for potential WSRs.

CLASSIFICATION

Q. When and how are rivers classified?

A. Once determined eligible, river segments are tentatively classified for study as either wild, scenic, or recreational based on the degree of access and amount of development along the river area. If designated by Congress, the enabling legislation generally specifies the classification.

The following factors are generally used to assign classification of individual river segments: accessibility, primitive nature, number and type of land developments, structures, water resource developments, and water quality.

Q. What is the difference between a "Wild," "Scenic," and "Recreational" river?

A. Any rivers designated in the National System are classified in one of three categories depending on the extent of development and accessibility along each section. Designated river segments are classified and administered under one of the following, as defined in Section 2(b) of the Act:

Wild river areas: Those rivers, or sections of rivers, that are free of impoundments, generally inaccessible except by trail (no roads), with watersheds or shorelines essentially primitive, and having unpolluted waters;

Scenic river areas: Those rivers, or sections of rivers, that are free of impoundments, having shorelines or watersheds largely primitive and shorelines largely undeveloped, but accessible in places by roads (i.e., roads may cross but generally not parallel the river). These rivers are usually more developed than wild and less developed than recreational. This classification may or may not include scenery as an ORV.

Recreational river areas: Those rivers or sections of rivers that are readily accessible by road or railroad, may have some development along the shoreline, and may have had some impoundment or diversion in the past. This classification, however, does not imply that recreation is an ORV, nor that the segment must be managed or developed for recreational activities.

Q. What is the significance of a river's tentative classification?

A. River segments may be tentatively classified for protective management purposes prior to a final suitability determination and/or congressional action. This ensures that river

values and characteristics are protected (subject to agency policies and standards) until the evaluation process and possible designation is completed. (See Protective Management Section.)

Q. What is the difference between river segments and river areas?

A. In agency parlance used for planning purposes, river "areas" include the entire length of an eligible, study, or designated river and its adjacent lands, generally 320 acres per river mile (except for Alaska at 640 acres per river mile). A river "segment" is a portion of the river area which has been delineated for evaluation and planning purposes. Segmentation is dependent upon the level of development of the shoreline, watercourse and access. Significantly different levels of development within the river area help define appropriate termini for river segments. (Refer to Interagency Guidelines.)

Q. When is a river formally classified?

A. Congress may classify the river upon the date of designation or authorize classification by the managing agency. In the latter case, managing agencies have one year to finalize the boundary, identify the appropriate classification, and publish a notice in the *Federal Register*. The agency has three years to submit a management plan for approval. For Section 2(a)(ii) rivers, classification would be established when the Secretary of the Interior designates the river.

Q. Can a WSR have more than one classification?

A. Although rivers included in the National System are usually referred to as "Wild and Scenic Rivers," there are three classifications (wild, scenic and recreational) which may exist on a particular river segment. Distinct segments along the designated reach may contain differing and non-overlapping classifications (wild, scenic, or recreational), e.g., a 100-mile designated WSR may be classified as wild for 50 miles, scenic for 30 miles, and recreational for 20 miles.

Q. What are the differences in WSR access opportunities and limitations under the three potential classifications?

A. River access is evaluated in the land use planning process. Specific access needs for public enjoyment, as well as any limitations, are determined in the river management plan. In keeping with the requirements of the Act, "wild" rivers are generally inaccessible, except by trail (no roads); "scenic" rivers are accessible by road, which generally don't parallel the river; and "recreational" rivers may have parallel or crossing road and railroad access.

PROTECTIVE MANAGEMENT

Q. Once a river segment has been determined eligible and given a tentative (inventoried) classification (wild, scenic, and/or recreational), how are its values protected?

A. Protective management of federal lands in the river area begins at the time the river segment(s) has been found eligible (except for non-federal lands under Section 5(a) study rivers, in which case the provisions under Sections 7(b), 8(b) and 9(b) of the Act apply). The identified ORVs are afforded adequate protection, subject to valid existing rights. Affording adequate protection requires sound resource management decisions based on National Environmental Policy Act (NEPA) analysis. Protective management may be initiated by the administering agency as soon as eligibility is determined. Specific management prescriptions for eligible river segments provide protection in the following ways:

Free-flowing Values. The free-flowing characteristics of eligible river segments cannot be modified to allow stream impoundments, diversions, channelization, and/or rip-rapping to the extent authorized under law.

River-related Values. Each segment shall be managed to protect ORVs (subject to valid existing rights) and, to the extent practicable, such values shall be enhanced.

Classification Impacts. Management and development of the eligible river and its corridor should not be modified, subject to valid existing rights, to the degree that its eligibility or tentative classification would be affected (i.e., its tentative river area classification cannot be changed from wild to scenic, or from scenic to recreational).

Q. Who protects rivers designated under Section 2(a)(ii) of the Act (designation by the Secretary of the Interior)?

A. The law states that rivers designated under Section 2(a)(ii), "shall be administered by the State or political subdivision thereof without expense to the United States other than for administration and management of federally owned lands." The NPS does provide ongoing technical assistance and partnership efforts with local managers and stakeholders on many of these rivers. Primarily, protection remains the responsibility of the state and/or local governmental entity, except where federal lands are involved. The Secretary of the Interior (or Secretary of Agriculture if national forest lands are involved) would make determinations of effect on federal or federally assisted water resources projects pursuant to Section 7 of the Act.

Q. Do rivers designated under Section 2(a)(ii) of the Act have to meet the same standards, and are they as well protected, as congressionally designated rivers?

A. State-administered components of the National System must meet the same standards of eligibility and resource protection as congressionally designated rivers. In no way should they be construed as "second class."

Q. If it is a state-administered river, can the state tell a federal land manager how to protect a part of the corridor if the river flows through federal lands?

A. No. However, the federal land administering agency must protect WSR values on federal lands.

Q. What action(s) should be taken if a river is determined to be eligible under Section 5(d)(1) of the Act pending a suitability determination or recommendation for or against designation?

A. When a river has been determined eligible, protective management requirements (subject to valid existing rights and a site-specific environmental analysis) ensure the river and the surrounding area are protected as a potential WSR pending a suitability determination.

Q. What action(s) should be taken once a river segment has been determined non-eligible pursuant to Section 5(d)(1) of the Act?

A. Once a river segment has been determined to be non-eligible, standard management practices (other than wild and scenic), as outlined by agency policy, may be applied as appropriate.

Q. What actions should be taken for rivers evaluated pursuant to Section 5(a) of the Act pending suitability determination or congressional action?

A. River segments authorized for study under Section 5(a) of the Act are automatically withdrawn from mining and mineral leasing and are subject to Sections 7(b), 8(b) and 9(b) for up to three years after the report is submitted to Congress. If Congress does not act within three years, the river segments (those determined non-suitable and those determined suitable and recommended for designation) are released from protective management requirements under the Act.

Q. How long do Section 5 eligible river segments remain under protective management?

A. It depends whether they are determined eligible under Section 5(a) or Section 5(d)(1). Protective management is specified for each scenario as follows.

1. River segments authorized for study under Section 5(a) of the Act are automatically withdrawn from mining and mineral leasing and are subject to Sections 7(b), 8(b) and 9(b) for up to three years after the report is submitted to Congress. If Congress does not act within three years, the river segments (those determined non-suitable and those determined suitable and recommended for designation) are released from protective management requirements under the Act.

2. For river segments on federal lands determined eligible under Section 5(d)(1) of the Act, management protection as determined by agency policy is in effect until such time as a suitability evaluation and subsequent decision (either by the management agency or by Congress) has been rendered.

SUITABILITY

Q. What does the term suitability mean?

A. Suitability represents an assessment or determination as to whether or not eligible river segments should be recommended for inclusion in the National System by Congress. The Act requires the appropriate Secretary prepare a report on the suitability or non-suitability of the river.

Q. What prompts various agencies to conduct WSR studies?

A. Under Section 5(a), Congress directs that a study be conducted on identified river segments (usually within three years). The designated federal agency conducts a study and subsequently reports its findings through the appropriate Secretary. As a general rule, where joint agency jurisdictions are involved, the cooperating agencies coordinate their efforts prior to making recommendations or submitting reports.

Under Section 5(d)(1) of the Act, "In all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential national wild, scenic and recreational river areas [on lands under their jurisdiction], and all river basin and project plan reports submitted to the Congress shall consider and discuss any such potentials. The Secretary of the Interior and the Secretary of Agriculture shall make specific studies and investigations to determine which additional wild, scenic and recreational river areas within the United States shall be evaluated in planning reports by all Federal agencies as potential alternative uses of the water and related land resources involved."

Q. What is the suitability determination process for Section 5 rivers?

A. Once river segments have been evaluated and determined eligible for further study, agencies conduct an evaluation to determine if the segments are "suitable" or "non-suitable" for WSR designation within their resource or land management planning processes (Section 5(d)(1)), or as a separate study for congressionally authorized studies (Section 5(a)). In each process, river values and their potential for designation are analyzed along with other resource values, issues and alternatives.

Either process is typically accompanied by an environmental document, normally an environmental impact statement (EIS), which describes the ORVs and identifies significant issues, public concerns, tentative boundaries and classifications, alternatives and impacts, and appropriate protective management prescriptions and mitigation measures.

Q. When are suitability determinations or analyses conducted?

A. Upon congressional authorization for a study or by federal agency initiative.

Q. What factors are considered in the suitability evaluation and determination process?

A. Factors to consider include, but are not limited to:

1. Status of landownership (jurisdiction or administrative role and/or presence); minerals (surface and subsurface); uses in the area, including the amount of non-federal land involved; and associated or incompatible uses.

2. Reasonably foreseeable, potential uses of the land and related waters which would be enhanced, foreclosed, or curtailed if the area were included in the National System, and the values which could be foreclosed or diminished if the area was not protected as part of the National System. Alternatives for protecting river values other than wild and scenic designation are also addressed.

3. Federal, state, local, tribal, public, or other interests in designation or non-designation of the river, including the extent to which the administration of the river, including the costs thereof, can be shared by state, local, or other agencies and individuals.

   Controversy exists in WSR studies. The mere presence of controversy will not preclude a river segment from being studied. The final recommendation as to whether a particular segment should or should not be recommended suitable for designation is determined only after a complete evaluation, public review, and impact analysis.

4. Estimated cost of acquiring necessary lands, interests in lands, and administering the area if it is added to the National System. Refer to Section 6 of the Act for policies and limitations of acquiring lands or interests in land by donation, exchange, consent of owners, easement, transfer, assignment of rights, or condemnation within and outside established river boundaries.

5. Ability of the agency to manage and/or protect the river area or segment as a WSR, or other mechanisms (existing and potential) to protect identified values other than WSR designation.

Where there is limited public lands (shoreline and adjacent lands) administered by the study agency within an identified river study area, it may be difficult to ensure the ORVs can be protected. Where the agency is unable to protect or maintain the ORVs, river segments may not be suitable for designation without assistance from the state and local agencies with land-use planning responsibility in order to protect identified river values.

State or local government, citizen initiated efforts under Section 2(a)(ii) of the Act, or joint studies under Section 5(c) of the Act are also a factor.

6. Historical or existing rights which could be adversely affected. In determining suitability, consideration of any valid existing rights must be afforded under applicable laws (including the Act), regulations, and/or policies.

7. Other pertinent factors, e.g., alternative ways to protect rivers.

Q. Do joint studies occur?

A. Agency officials are required to coordinate when their responsibilities relevant to WSRs overlap. Officials should determine the level of study to be conducted, who will lead the study, and, to the extent necessary and feasible, prepare a joint document for submission to Congress or congressional delegations.

Q. Under what circumstances should federal river-administering agencies consult with each other?

A. Two circumstances where agencies should always seek information and advice from each other are:

1. In agency inventory and planning processes, and environmental analysis processes for aquatic ecosystems and regional watersheds; and,

2. When proposed actions have the potential of creating an adverse impact on a river or land adjacent to the river which may affect other agency-administered portions of the river. In these cases, the agencies will be consulted to provide advice on ways to avoid or mitigate adverse effects. Consultation is incorporated into the environmental analysis process.

BOUNDARY IDENTIFICATION AND DETERMINATION

Q. How are river corridor boundaries determined?

A. Corridors may not exceed an average of 320 acres per river mile (640 acres per river mile in Alaska) over the designated portion of the river. Agencies delineate boundaries based on natural or man-made features (canyon rims, roads and ridge tops, etc.) and legally identifiable property lines.

Q. When will corridor boundaries be established?

A. The Act requires that detailed boundaries portrayed on maps be established and submitted to Congress within one year of designation. Agencies may finalize boundaries through their respective land management planning process.

Pending the establishment of detailed river boundaries, the Act specifies that the interim boundary is one-quarter mile on each side of the river as measured from the ordinary high water mark.

Section 3(b) of the Act states, "The agency charged with the administration of each component of the national wild and scenic rivers system designated . . . shall, within one year from the date of designation of such component . . . (except where a different date is provided . . .), establish detailed boundaries (which boundaries shall include an average of not more than 320 acres of land per mile measured from the ordinary high water mark on both sides of the river); and determine which of the classes outlined in Section 2(b) best fit the river or its various segments. Notice of the availability of the boundaries and classification, and of subsequent boundary amendments shall be published in the *Federal Register* and shall not become effective until ninety days after they have been forwarded to the President of the Senate and the Speaker of the House of Representatives."

Section 3(c) of the Act requires maps of all boundaries and descriptions of the classifications of designated river segments, as well as any subsequent amended boundaries, be available for public inspection in the offices of the administering agency in the District of Columbia and in locations convenient to the designated river.

Q. How are river corridors established and what is the maximum corridor allowed?

A. Corridor boundaries are established to protect the free-flowing nature, water quality, and ORVs for which the river was designated. Generally, the corridor width for designated rivers cannot exceed an average of 320 acres per mile which, if applied uniformly along the entire designated segment, is one-quarter of a mile (1,320 feet) on each side of the

river. Boundaries may be wider or narrower, but are not to exceed the 320 acre average per mile per Section 3(b) of the Act, without approval by Congress. The acreage of any islands located within the designated corridor do not count against the acreage limitation. Measurement is made from the ordinary high water mark (exclusive of islands). In Alaska, the allowable boundary is 640 acres per mile.

Corridor boundaries for federally designated and administered WSRs may vary based on a number of conditions, but are usually delineated by legally identifiable lines (survey or property lines) or some form of on-the-ground physical feature (i.e., topography, natural or man-made features such as canyon rims, roads, etc.), which provide the basis for protecting the river's identified values and practicality in managing those values.

In certain site-specific cases, including where acquisition of lands may be involved, a survey may be needed to monument the boundary of the designated WSR corridor.

Q. How may a change in a designated boundary be made? What is the process to modify or adjust a designated boundary?

A. The administrative process varies from agency to agency, but Congress must be notified. Subject to agency discretionary and/or legislative authority, boundaries may be revised based on further analysis or changed conditions. Subsequent boundary amendments (laterally in width or acreage only, not extended up or down the segment) by the administering agency are to follow the same process as described for boundary development in Sections 3(b) and (c) of the Act. A notice may be necessary in the *Federal Register*, along with a public comment period depending on the extent of the boundary adjustment. Environmental analysis documentation may also be required along with any amendment to the river management plan.

Q. Are tributary streams included in a river designation?

A. Yes. Tributaries may be included as specifically identified in the authorizing legislation or as a part of the overall river corridor boundary.

Q. How are boundaries determined on stream channels which are braided?

A. Boundaries are measured from the ordinary high water mark (exclusive of islands within the designated reach). In the case of braided rivers, boundaries will be measured from the outermost braid unless otherwise specified by Congress. This is typically considered during the suitability determination and in the development of the final river corridor boundary.

Q. Is a map available showing river segments and their legal descriptions?

A. Yes. Legal descriptions along with a map are submitted to Congress in accordance with Sections 3(b) and (c) of the Act and are retained by the administering agency. Requests for maps should be made to the agency field offices which administer the specific study or designated river(s).

WSR STUDY REPORT AND THE NEPA PROCESS

Q. When are WSR study reports done?

A. WSR study reports are prepared in three instances:

1. When Congress authorizes a study pursuant to Section 5(a) of the Act.

2. For **only** those eligible rivers determined suitable by a federal land management agency pursuant to Section 5(d)(1) of the Act and recommended for designation.

3. For state-initiated Section 2(a)(ii) rivers, a study report is prepared by the NPS and submitted to the Secretary of the Interior.

Q. What are the elements of a WSR study report?

A. Section 4(a) of the Act and the Interagency Guidelines describe and discuss content requirements, specific topics to be addressed, and the way in which information should be presented in such a study report. The elements of the WSR study report usually summarize and incorporate relevant river information such as contained in a land management plan and associated EIS (or legislative EIS (LEIS)). For example, the executive summary, record of decision, location and description of study areas, eligibility and suitability determinations, recommendations, alternatives, impacts, management and protection considerations, public involvement, etc., may be included. The NEPA process can, and is, readily merged with the requirements of the WSR study report.

The study report, planning document, and combined NEPA analysis (i.e., LEIS if required), are usually submitted to the agency head for review and subsequent transmittal to Congress (or the Secretary of the Interior if a Section 2(a)(ii) river). Final decisions are made by Congress.

Q. What is the process used by the managing agency to transmit proposed WSR legislation?

A. It will vary from agency to agency, but generally involves the following steps to designate additions to the National System.

1. The field office prepares and forwards to the respective headquarters office sufficient copies of a proposed legislative package consisting of a study report and combined NEPA analysis, including:

a. Summary information on the land management planning process, (if it is a Section 5(d)(1) study), issues, and specific provisions.

b. Draft transmittal letters (recommendations for legislation).

c. Public comments.

2. The agency headquarters finalizes proposed legislation and transmittal letters.

3. There is an internal agency review of the legislative package by affected program offices.

4. Agency/Departmental briefings are conducted.

5. The legislative package is transmitted to a Departmental Legislative Affairs Office which in turn forwards the package to the Office of Management and Budget (OMB) for review.

6. Final changes (as necessary) are made by the agency, and the package is returned to the Departmental Legislative Affairs Office for transmittal to the President, both Houses of Congress, and respective members of Congress.

EFFECTS OF WSR DESIGNATION

Social and Economic Benefits and Impacts

Q. What are some of the social and economic benefits and impacts (positive and/or negative) from WSR designation?

A. Benefits may include, but are not limited to: providing managers tools or mechanisms to maintain free-flowing condition, i.e., protection of river values through the assessment of hydroelectric facilities or water resource development projects within the designated reach; protection of water quality and ORVs; and, if a management plan objective, promotion of economic development, tourism, or recreational use.

There may be an increase in property values near the river. Impacts may include, but are not limited to: initial or sustained attraction to the river because of designation, ability of federal agencies to purchase property, and restrictions via zoning adopted by local governments to protect river values.

Q. What consideration is given to the economic potential of ecotourism on rural economies?

A. The economic impacts of implementing various alternatives should be addressed in the river management planning process. Ecotourism, as well as other economic issues, such as development and tourism both inside and outside of potentially designated river corridors, should be considered.

Q. Will WSR designation lead to restrictions on recreational use of rivers?

A. Recreational use of our nation's rivers is increasing in both magnitude and extent, i.e., the types of recreational activities pursued and the technologies being used. Limitations on WSRs and other federally administered rivers are necessary in some cases to protect resource and social values. Importantly, whether and/or how to restrict recreational use is a key issue in the planning process which includes extensive local, regional and national public involvement.

Federal Lands and Land Uses

Q. How is it determined which uses or activities are "grandfathered" and which are not?

A. Most current uses and activities on rivers and adjoining lands may continue. The primary consideration in any river or land use limitation will be the protection and enhancement of the ORV(s) which resulted in the river's designation. Those uses that clearly threaten these values will be addressed in the planning process, or through site-specific environmental analyses on a case-by-case basis where federal lands are involved.

Q. How does each classification (wild, scenic, recreational) for a designated river affect future development on public lands in the area?

A. WSR designation seeks to protect and enhance a river's current condition. Generally, the classification of the river reflects the level of development at the time of designation, and future development levels must be compatible with such classification. Any proposed new developments on federal lands must be guided by land use and resource management objectives which are compatible with the river's classification.

Q. What are the effects of WSR designation on future needs to develop or expand existing rights-of-way?

A. WSR designation seeks to protect and enhance a river's current condition. Projects proposed (or assisted) by a federal agency that may affect the river's free-flowing condition -- and are not automatically prohibited by the Act -- are subject to an evaluation by the river-administering agency. Those projects found to have a negative effect on the values for which the river was added to the National System are typically prohibited through the authority of the proposing or assisting agency.

New mining claims are restricted, but those already established can be worked and must be afforded reasonable access. Existing farms, homes and cabins -- with their associated rights-of-way -- along the river can continue to be used as they were before. Whether or not new structures can be built, or existing rights-of-way expanded, depends on state and local regulations, easement agreements, NEPA assessments, and the river management plan. In general, classifications reflect the level of development at the time of designation and condition future development levels to that compatible with such classifications.

Section 13(g) of the Act allows the granting of easements and rights-of-way within the boundaries of designated components in accordance with applicable laws, provided that the conditions attached to the grant are consistent with the purposes of the Act.

Q. What is the effect of designation on land tenure?

A. Section 8(a) of the Act withdraws public (federal) lands within the authorized boundary of a designated component from entry, sale, or other disposition under the public land laws of the United States.

Q. What are the consulting requirements with the Federal Highway Administration (FHWA) for proposed projects involving construction, modification, maintenance, or improvement of roads, bridges, or transportation corridor actions?

A. Federal WSR-administering agencies need to work with the FHWA pursuant to Section 4(f) of the Department of Transportation Act of 1966 in protecting the values for which the river was designated and in accordance with the river management plan. Any FHWA projects which may affect free flow (i.e., bridges, roadway improvements, etc.) are also subject to evaluation by the river-administering agency under Section 7 of the Act (or in the case of Section 2(a)(ii) rivers, the NPS will evaluate for non-federal lands).

Private Lands

Q. What are the effects of WSR designation on landowners within the river corridor?

A. Under the Act, designation neither gives nor implies government control of private lands within the river corridor. Although Congress (or the Secretary of the Interior for 2(a)(ii) rivers) could include private lands (inholdings) within the boundaries of the designated river area, management restrictions would apply only to public lands. The federal government has no power to regulate or zone private lands under the Act; however, administering agencies may highlight the need for amendment to local zoning (where state and local zoning occurs). People living within a river corridor would be able to use their property as they had before designation. (See Acquisitions Section.)

Q. What if there is a proposed development on private land which is clearly incompatible with WSR designation, classification, or management objectives?

A. The government typically provides technical assistance to find ways to alleviate or mitigate the actual or potential threat(s). Purchasing a partial right (easement) or the property in fee title is usually the last resort. If an easement is purchased, the owner would sell certain development rights and receive a payment, yet retain title to the land. Landowners can use their land as they have previously; rent it, donate it, sell it, or leave it to their heirs; and/or restrict public access. Landowners do not lose land under an easement purchase.

Q. Can lands be acquired by the federal government under the Act on Section 2(a)(ii) river corridors?

A. No. The Act specifically prohibits the federal government from expending funds on Section 2(a)(ii) rivers, except to manage federal lands.

Q. What restrictions apply to residences, farm buildings and other buildings? Will landowners lose any use or development rights?

A. Specific management goals for new construction are best addressed through individual river management plans. Federal guidelines allow different degrees of development along rivers classified as wild, scenic, or recreational. There is a wide range of uses compatible with these classifications so long as the overall values and character of the river corridor is maintained. River management plans prescribe land use or development limitations to protect ORVs. Federal acquisition of land use or development rights would require landowner compensation.

Q. Can the private landowner sell land within the WSR corridor after designation?

A. Yes. The ability of the owner to buy or sell private property is not affected. Landowners who sell should inform the new owner that any easements sold are transferred with the title.

Q. Will WSR designation likely cause changes in property values?

A. WSR designations generally cause property values to remain stable or increase.

Q. Will landowners be reimbursed for vandalism to their property?

A. No. Federal agencies do not have the authority to reimburse landowners for damage to their lands as a result of public use. Access is up to the owner to grant, and vandalism is handled by local law enforcement authorities. However, federal agencies should work closely with landowners to minimize problems through brochures and maps, signs, etc., and many landowners feel they are better off with the agency taking some responsibility.

Q. How will WSR designation impact landowners who have power or communication transmission lines that cross rivers located on federal lands?

A. Existing powerline or communication transmission rights-of-way will continue to be used and maintained. New proposals would be evaluated in light of impacts to river values.

Q. How will the federal government monitor and evaluate activities on private land?

A. WSR status does not provide federal authority to regulate private lands. The river-administering agency will cooperate with state and local agencies to appropriately monitor and evaluate activities on private land. If such activities (existing or potential) threaten or are incompatible with the values which contributed to the river's designation, then to the extent necessary, mitigation will be accomplished in cooperation with land-owners and federal, state and local agencies.

Q. Will designation affect existing landowners ability to restrict, give permission, and otherwise control who is on the riverbanks?

A. No. On navigable rivers, the bed and banks to the ordinary high water mark are state lands and are available under state laws for public use. Private landowners control public access to their property along the banks of non-navigable rivers. The designation of a river into the National System has no bearing upon the determination of navigability.

Q. Can landowners continue to charge for fishing access?

A. Landowners can charge a fee for crossing private lands to fish except, where a public access easement exists. The designation of a WSR does not change landowner rights unless all or a portion of those use rights are acquired from the landowner.

Q. What restrictions and procedures apply to construction, improvement, or maintenance of *private* roads within WSR corridors?

A. Maintenance of roads generally would not be affected. In consultation with landowners involved through coordinated management planning, every effort would be made to eliminate or reduce adverse impacts for any proposals for road improvement, realignment and/or new construction. If a proposed new road would have a negative impact on river values, the administering agency will work with the landowner(s) to mitigate the proposal. Should mitigation and/or consultation fail to reduce adverse impacts to an acceptable level, the administering agency could negotiate with the landowner to purchase the specific development rights necessary to remove the threat to the river.

Zoning

Q. Can the federal government regulate or zone private lands?

A. Under the Act, the federal government has no authority to regulate or zone private lands. Land use controls on private lands are solely a matter of state and local zoning. Although the Act includes provisions encouraging the protection of river values through state and local governmental land use planning, there are no binding provisions on local governments. In the absence of state or local river protection provisions, the federal government may assure compliance by entering into agreements with landowners and/or through purchase of easements, exchanges, or acquisition of private lands.

Q. What is the relationship of WSR designation to local land use planning programs?

A. Local government entities are encouraged (in some states, e.g., Oregon, it is required by the state) by federal management agencies to provide for the protection of WSR values in their land use plans, including the use of zoning and other land use control limitations.

State land use requirements often require each local jurisdiction to address uses and activities within WSR areas in their planning updates. Such local planning may be carried out by comprehensive plan policies, zoning requirements, negotiations with landowners, or through other mechanisms.

Q. What does the Act say about the use of zoning to allow uses which are consistent with protecting the values for which the river was designated? What are the tools being used by the federal agencies in lieu of Secretarial zoning guidelines?

Section 6(c) of the Act states:

> *. . . the appropriate Secretary shall issue guidelines, specifying standards for local zoning ordinances, which are consistent with the purposes of this Act. The standards specified in such guidelines shall have the object of (a) prohibiting new commercial or industrial uses other than commercial or industrial uses which are consistent with the purposes of this Act, and (b) the protection of the bank lands by means of acreage, frontage, and setback requirements on development.*

The Act mandates protection of ORVs (including adjacent land-based resource values such as recreational access, scenery, wildlife habitat, historic sites, etc.), but does not set standards for such protection, and, except for Section 6(c), implies that land acquisition is the primary tool for protecting adjacent land-based resources. Land acquisition is,

however, slow, expensive, controversial, and not always the most efficient means of protecting river resources located on private lands.

There is no cookbook solution for protecting river values on private lands within WSR corridors. The amount of protection needed varies depending on the resource and topography. No two state's zoning laws are alike. Therefore, agency planners use a wide range of resource protection tools including:

- Incentives offered through a variety of federal, state and local programs.
- Technical and limited financial assistance as directed in Section 11(b)(1).
- Focusing on desired outcomes as opposed to strict protection formulas in developing management plan recommendations.
- Distinguishing between protection standards for the immediate riparian zone and the rest of the river's watershed or viewshed.

Access

Q. Will designation cause restricted boating access?

A. Generally, no. Restrictions on boating access and the implementation of entry permit systems (rationing and/or allocation) are not usually related to designation. Limitations on boating usually relate to the amount of use and/or types of user. Those rivers with use levels or types of use beyond acceptable limits (i.e., resulting in impacts to the values) may necessitate restricted access regardless of designation.

Q. How does easement acquisition affect public access?

A. Depending upon the terms and conditions of each easement, access rights may or may not be involved. For example, an easement might only involve the protection of visual resource qualities with no provisions for public use. A trail or road easement by necessity would involve public use provisions. Any provisions for public use of private lands must be specifically purchased from the landowner.

Q. Will designation increase recreational use and unauthorized uses on private land?

A. Many of the nation's rivers have received increased use in recent years. River use may increase slightly or not at all as a result of designation. Unauthorized uses should not

increase since the managing agency will provide maps and signs to direct use to publicly owned access sites. No use of private lands is allowed unless special arrangements are made with the landowner. Private landowners are still entitled to post their property with "No Trespassing" signs or require users to obtain landowner permission.

Q. How will the federal government control unauthorized use (trespass) on private land within the river corridor?

A. Administering agencies do not control public use of private lands. Unauthorized uses are discouraged by the managing agency, which often provides maps, signs and brochures to direct users to publicly owned access sites. Use of private lands is subject to the landowner's permission. Public access needs are determined through the river planning process, which involves full public participation. Should the majority of the public be denied access to the river, these needs would be documented, alternatives identified, and solutions found through management plans developed for the river.

Forestry, Agriculture, and Livestock Grazing

Q. How does WSR designation affect timber harvesting practices inside the corridor?

A. Harvesting practices on federal lands located within WSR corridors must be designed to help achieve land-management objectives consistent with the protection and enhancement of the values which caused the river to be added to the National System. WSR designation is not likely to significantly affect timber harvesting or logging practices beyond existing limitations to protect riparian zones and wetlands which are guided by other legal mandates and planning direction.

Once designated as "wild," "scenic," or "recreational," the river must be managed to maintain that classification within the established corridor. Wild river segments have no roads or railroads along them nor ongoing timber harvest. The degree of protection and enhancement is a management prerogative based on an appropriate level of analysis typically done through the river planning process. For example, if scenery is identified as an ORV, then visual resources must be protected by developing appropriate objectives to guide management activities both within and outside the river corridor.

Federal and state regulations which protect wildlife, visual values, water quality, etc., may prohibit timber harvesting from streamside areas regardless of whether or not a river is designated.

Q. How does WSR designation effect timber harvest practices outside the corridor?

A. Federal timber management activities outside the corridor will be designed to not adversely affect the values which caused the river to be designated. Values such as water quality, scenery, and riparian-dependent resources would be considered. These types of resources are addressed in the river planning process to guide action both inside and outside the designated river corridor.

Private timber management practices are guided by state and local authorities, along with management agencies who may provide technical assistance to mitigate incompatible or inappropriate activities. Under the Act, the only way the federal government can restrict private timber harvesting is through purchase of timber rights (in easement or fee title) or under cooperative agreement.

Q. What effects does designation have on agriculture and livestock grazing practices?

A. Generally, existing agricultural practices (e.g., livestock grazing activities) and related structures would not be affected by designation. Since the Act does not give federal agencies authority to regulate private land, any affect to agricultural practices would be through technical assistance or compensation by purchase of easements, unless otherwise regulated by local zoning ordinances.

Activities and practices inside the corridor are dependent on the type of classification (wild, scenic, and/or recreational), values for which the river was designated, and land use management objectives. The level of protection should be commensurate with the identified river values.

Guidelines issued by the Secretary of Agriculture and the Secretary of the Interior indicate that livestock grazing and agricultural practices should be similar in nature and intensity to those present in the area at the time of designation. Grazing is permitted under wild, scenic, or recreational classification, but will be managed to maintain the values for which the river was designated.

Mining and Mineral Leasing

Q. How does WSR designation affect mining operations on federal lands?

A. Federal lands within the boundaries of river areas (generally one-quarter mile -- one-half mile in Alaska -- from the ordinary high water mark on each side of the river) designated and classified as **wild** are withdrawn from appropriation under the mining and mineral

leasing laws by Section 9 of the Act. Federal lands within the boundaries of river areas designated and classified as **scenic** or **recreational** are not withdrawn under the Act from the mining and mineral leasing laws.

Existing valid claims or leases within the river boundary remain in effect, and activities may be allowed subject to regulations that minimize surface disturbance, water sedimentation, pollution, and visual impairment. Reasonable access to mining claims and mineral leases will be permitted. Mining claims, subject to valid existing rights, can be patented only as to the mineral estate and not the surface estate, subject to proof of discovery prior to the effective date of designation.

For rivers designated as **wild**, no new mining claims or mineral leases can be granted; however, existing valid claims or leases within the river boundary remain in effect, and activities may be allowed subject to regulations that minimize surface disturbance, water sedimentation, pollution and visual impairment.

For rivers designated as **scenic** or **recreational**, filing of new mining claims or mineral leases is allowed but is subject to reasonable access and regulations that minimize surface disturbance, water sedimentation, pollution and visual impairment.

Q. How does WSR study status affect mining and mineral leasing on federal lands?

A. Subject to valid existing rights, rivers authorized for study under Section 5(a) of the Act are withdrawn under the mining laws while in study status. This withdrawal covers one-quarter mile -- one-half mile in Alaska -- from the ordinary high water mark on both sides of the river. River study areas are not withdrawn from mineral leasing but are subject to conditions as determined by the appropriate Secretary. Under Section 9(b) of the Act, the withdrawal impacts expire (unless designated by Congress) three calendar years from the time the recommendation, study report, and associated documents are received by Congress.

Rivers being studied under Section 5(d)(1) of the Act are not withdrawn from the mining or mineral leasing laws. Protective management requirements for eligible river areas determined suitable and recommended for designation are subject to existing laws and agency guidance until Congress acts. (See Protective Management Section.)

Q. When a WSR is designated, are only rivers designated and classified as "wild" withdrawn under Section 9 of the Act?

A. Yes. To withdraw a designated scenic or recreational river, the managing agency must submit a separate public land order or notice of realty action.

Recreation

Q. Will the public still have access to public lands within WSR areas for hunting and fishing?

A. Yes. Fishing and hunting are regulated under state laws. Hunting and fishing are allowed, except where agencies might establish no hunting zones for safety or for other reasons under Section 13(a) of the Act in consultation with state fish and wildlife agencies (e.g., national parks).

Q. Will facilities, such as campsites, restrooms, or access ramps, be provided by federal or state agencies?

A. These facilities will be provided if they are consistent with the management plan for each river and subject to the availability of funds.

Q. Will camping be restricted within the corridors? How is it to be enforced?

A. Camping is often important to the enjoyment of WSRs. As appropriate, and when private interests do not provide sufficient facilities, the federal managing agency attempts to provide them. As a condition of use, and in line with management objectives for the river area, the managing agency may specify that camping will be permitted only in designated locations. Enforcement of camping restrictions and limitations can be through indirect means (brochures, maps, signs, etc.) and/or direct means (permits, enforcement personnel, etc.).

Q. Will designation lead to more river use and the need for a permit system?

A. Although the research on the effects of designation is limited, a review of such areas in the western United States indicates that little or no increase in use occurs directly as a result of designation. The implementation of permit systems or other limits of use are typically undertaken when use exceeds an acceptable level or carrying capacity as determined through an agency's planning processes.

Q. Does WSR designation affect the public's right to float a river?

A. No. The public's right to float a particular river does not change with designation. However, river users do not have the right to use, occupy, or cross private property without permission, right-of-way, easement, etc.

Use of Motors, Motorized Vehicles, and Overflights

Q. Are motorized vehicles allowed within designated WSR corridors?

A. Yes. Motors are allowed on designated WSRs subject to congressional intent and river management objectives defined in legislation and through the river planning process. Generally, access routes within the river corridors would continue to be available for public use. However, if that type of use adversely impacted the ORVs identified for the river area, the route could be closed or regulated.

Acceptability may be determined by historical or valid rights involved, or subject to, specific legislative language, if provided, for motorized use (vehicles or watercraft powered by motors). Motorized use on land or water is best determined by the river management planning process and considers factors such as impacts (positive or negative) on river values, user demand for such motorized recreation, health and safety to users, and acceptability with desired experiences and other values for which the river was designated.

Q. Are the use of jet skis, hovercraft, and other types of motorcraft allowed on WSRs?

A. Yes, if they are consistent with management objectives for the river and do not degrade the ORVs for which the river was designated.

Q. Are there any restrictions on overflights above WSRs?

A. No. However the Federal Aviation Administration (FAA) has entered into memorandums of understanding with certain federal agencies in identifying certain parks, wilderness, and other special areas where aircraft noise or safety is a concern. The FAA has regulations requesting pilots not to fly below a certain elevation (usually 2,000 feet above ground level) above certain parks, refuges and wilderness areas, e.g., Grand Canyon National Park (Public Law 100-91) and the Boundary Waters Canoe Area (Executive Order 10092, dated December 17, 1949).

Overlapping or Dual Designations

Q. Can areas already in another federal designation, such as wilderness or national conservation area, be designated as a WSR?

A. Yes, Congress has frequently added WSR status to rivers flowing through national parks, national wildlife refuges, and designated wilderness. Each designation recognizes

distinct values for protection and generally do not conflict. In some cases, WSR designations extend beyond the boundaries of other administrative or congressional area designations, thereby providing additional protection to the free-flowing character and river values of the area. Section 10(b) of the Act addresses potential conflicts between the Wilderness Act and the Wild and Scenic Rivers Act and states, in cases where this occurs, the more restrictive provisions would apply.

Q. Why is it necessary to designate a river area as wild and scenic when it is already protected under another congressionally authorized designation?

A. In many cases, there may be no practical effect. However, laws like the Wilderness Act do allow certain activities in designated wilderness which may be incompatible on a WSR, e.g., water resource developments if authorized by the President. In addition, WSR designation prohibits federal participation in, or assistance to, water resource developments above or below a designated river (potentially outside the wilderness area) which may adversely affect the designated river segment. Agencies are required by policy and law to evaluate potential additions to the National System located in wilderness.

Q. What are the differences, if any, between WSRs and wilderness?

A. Differences include, but are not limited to, the following areas:

1. Motors may be allowed on WSRs, whereas in wilderness motorized use is prohibited.

2. Although dams could be authorized by the President in wilderness, on a WSR dams would be incompatible with designation.

3. Depending on the classification, new rights-of-way, roads, trails, bridges, and recreational facilities (e.g., campgrounds, and picnic areas) may be allowed inside WSR areas, whereas these are generally prohibited in wilderness.

4. Valid mining claims established prior to designation may be patented for both the surface and mineral estate in wilderness, but for WSRs only the mineral estate may be patented.

5. Acquisition of private inholdings by condemnation cannot be used in wilderness, whereas the Wild and Scenic Rivers Act allows for it, subject to limitations.

References to Water Issues in the Wild and Scenic Rivers Act

Q. What does the Act say about management of water resources?

A. The following provides a summary of the sections of the Act related to water resources:

Section 1 of the Act establishes that the national policy of dam and other construction be complemented by a policy that would preserve other selected rivers or sections "in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes."

Sections 4(a) and 5(d) refer to the requirements for coordinating and assessing water resources planning in study reports and eligibility assessments.

Section 10(a) states, "Each component of the national wild and scenic rivers system shall be administered in such a manner as to protect and enhance the values which caused it to be included in said system. . . ." This would require that, in addition to protecting free-flow and water quality, certain rivers having been found to have outstandingly remarkable hydrologic values (i.e., exceptional water quality, unique flow regimes, critical hydrological related values, etc.) should be managed in such a way as to insure adequate protection of specifically recognized water resource values.

Section 11(b)(1) allows the agencies to assist, advise and cooperate with states ". . . to plan, protect and manage river resources." This section provides the managing federal agencies the incentive to work in coordination with the states in forming water protection strategies. Individual agencies have entered into cooperative agreements and memorandums of understanding with various states regarding water management issues.

Section 13 is the most critical section of the Act related to water resources management. This section provides reservation authority and is clear in its intent to reserve water only in the amounts necessary to accomplish purposes of the Act. Section 13(b) stipulates that jurisdiction over waters of any designated stream shall be determined by established principles of law. It further requires the United States (through the administering agency) to compensate owners for any taking of "vested" water rights. However, designation in and of itself does not create an exemption from state water law: "Nothing is this act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws."

Sections 13 (c) and (d) further address water resources jurisdictional issues. These subsections recognize the jurisdiction of the states over water management and also declare an overriding federal interest in, and authority over, designated rivers. Desig-

nation in and of itself does not necessarily imply a reservation of waters, nor does it affect the jurisdiction of the states over water resources of designated streams. However, Section 13 (c) qualifies recognition of state jurisdiction by stating that designation ". . . shall not be construed as a reservation of the waters of such streams for purposes other than those specified in this Act, or in quantities greater than necessary to accomplish these purposes." Section 13 (d) further limits states' rights and recognizes federal interest by stating, "The jurisdiction of the States over waters of any stream . . . shall be unaffected by this Act to the extent that such jurisdiction may be exercised without impairing the purposes of this Act or its administration."

The Act, through Section 13 (e), also declares that designation will not affect interstate compacts made by the states.

Water Quality

Q. What impact does WSR designation have on water quality?

A. Congress declared its intent to protect the water quality of rivers added to the National System in Section 1(b) of the Act. Congress further specified that the river-administering agencies cooperate with the EPA and state water pollution control agencies to eliminate or diminish water pollution (Section 12(c)). Certain states (Arkansas, Florida, North Carolina, Oregon, et al) have used alternative forms of designations, e.g., "outstanding or exceptional resource waters," as an opportunity to provide the highest water quality standard for designated rivers.

Q. What is the federal agency's obligation to protect water quality in WSRs?

A. The water quality standard requires compliance with the Clean Water Act or non-degradation of existing quality, whichever is more protective. The obligation is to develop and implement management actions that protect and enhance water quality. Such actions may include partnerships with local and state agencies and water conservation districts. Further, the administering agencies should develop an appropriate level of water quality monitoring.

Q. What protective management requirements can administering federal agencies use to protect free-flow or ORVs on WSRs which may be navigable, contain private or state lands, or contain submerged mineral holdings?

A. For designated rivers which are determined navigable, the federal and state governments collaborate on matters affecting instream flow and other in river resources.

Water Rights

Water law is a complex legal area, and water rights are a highly contentious issue. The following water rights and instream flow Q&As are not comprehensive, and there may be differences of opinion as to how best to answer these questions. Whenever a water rights issue arises, a river manager should work with appropriate staff and, as necessary, seek legal counsel.

Q. What does the Act specifically say about water rights?

A. The Act requires the protection of water flows and water quality in designated rivers. Section 13 (c) states, "Designation of any stream or portion thereof as a national wild, scenic or recreational river area shall not be construed as a reservation of the waters of such streams for purposes other than those specified in this Act, or in quantities greater than necessary to accomplish these purposes."

Q. How does WSR designation affect existing or future water rights?

A. Section 13 (b) of the Act states that jurisdiction over waters is determined by established principles of law. Existing, valid water rights are not affected by designation. Few cases for water rights established under the Act have been determined.

Interstate compacts (Section 13(e)) are protected and not affected by designation. In prior appropriation states, any water rights claimed under state law would have a priority date as of the river's date of designation by Congress and would be considered junior to existing water rights.

Alterations to existing irrigation or water withdrawal facilities may be approved under Section 7 of the Act as long as there is no direct and adverse effect to the values for which the river was designated. The valid and existing rights of present land owners to use water and shorelines are not affected.

The federal government may acquire water rights under state law. In some instances, the federal government can purchase water from private citizens who have vested rights.

Q. Does the Act provide the authority for a federal reserved water right?

A. Yes, the Act provides authority in Section 13. Also, specific amendments (adding rivers to the National System) may have special language addressing site- or river-specific situations. The Act states that any reservation or instream flow water right shall only be for the minimum amount necessary to preserve the free-flowing condition of the river and to preserve the values for which the river was designated.

A more complete discussion about the relationship between the Act and federal authority over water (including federal reserved and non-reserved water rights) is found in the *CRS Report for Congress, Water Rights and the Wild and Scenic Rivers Act*, by Pamela Baldwin (March 30, 1990). The author states, ". . . the Act is likely to be interpreted as giving rise to federal water rights. The Act does not specify the quantity of the right. The amount of the federal right is likely to vary from river to river depending on the river's flows, the then unappropriated quantities in the river, and the values for which the river is being protected."

Water rights for a WSR would have a priority date as of the date of designation. However, reserved rights associated with a particular WSR may be related to other federal reservation rights not associated with designation. Such reserved rights could be associated with federal reservations created for the area or lands where the river is located.

Q. In asserting a federal reserve water right on a WSR, does the government have to file through the state appropriative system?

A. Yes. Even if the agency has reserved rights, it is essential to coordinate and cooperate with the appropriate state agencies regarding filing, quantification, uses, etc.

Q. How does each classification (wild, scenic, or recreational) affect water rights?

A. It does not affect the status or amounts of water rights. How the river is classified is independent of water quantity. Water rights claimed or asserted are based on the amount of water required to protect the ORVs identified for the particular river segment.

Instream Flow

Q. Can the federal government utilize state law to ensure instream flows for a WSR?

A. Yes. Federal agencies' policies encourage the use of state law to protect instream flows for WSRs. However, federal agency application for instream flow water rights for WSRs is not always possible under prior appropriation water law.

A number of prior appropriation doctrine states have passed legislation that specifically allows protection and maintenance of water in the channel as instream flow or non-consumptive water rights. Approximately a dozen western states have some sort of legislation recognizing beneficial uses for recreation, esthetics, fish or wildlife, and, in some cases, water quality needs. Usually state offices dealing with fish, wildlife,

recreation, or environmental protection may apply for and hold instream flow water rights. In some states, federal agencies, individuals and organizations may also seek instream flow rights. Few WSRs have secured instream flows under state water law.

Q. Can the federal government obtain appropriated instream flows to protect ORVs?

A. Yes. Federal agencies may initiate efforts to secure water rights for unreserved waters for purposes of supplying adequate instream flows. They can also develop cooperative or voluntary water flow management strategies with other water users and the state. Water management strategies and agreements can be negotiated between interested parties, or water rights that can be converted to instream flows can be acquired from willing sellers in states that allow such transfers.

For non-consumptive, non-reserved water rights (instream flows), federal agencies may utilize existing state procedures. Options for state agencies include securing an instream water right recognized under state law which is able to hold instream rights for certain beneficial uses or resources (i.e., Departments of Fish and Wildlife, Environmental Quality, or Parks and Recreation). In addition, necessary flows might be secured through statewide basin planning processes. In the basin planning process, waters of the state may be closed from appropriation (withdrawn) by legislative action or restricted by an administrative order.

In some cases, other federal laws (e.g., the USFS under the Multiple Use Sustained Yield Act) provide a reservation of water; therefore, there is possibly less need for that agency to acquire water rights.

Federal agencies also have other options to protect water rights or instream flow needs by participating in water rights adjudication proceedings such as protesting an application for water rights if such rights would affect federal resources or United States water rights, or filing for water rights under state law.

Other administrative methods to assure instream flows include special use authorizations for water developments, easements, memorandums of understanding, and FERC hydropower licensing. Purchase and exchange of water rights is an option to acquire rights when waters are fully appropriated and federal reserve rights are not applicable.

In addition, some states may have already established minimum stream flows and approved instream water rights for fish protection, to minimize the effects of pollution, or for maintaining recreational uses for a particular river. Minimum stream flows and instream water rights usually have a priority date and are regulated in the same way as other water rights.

Q. How does the federal government determine instream flow requirements?

A. Through a wide variety of scientific methods, applications and techniques. It is most appropriate, where time and funding are available, to utilize an interdisciplinary approach and value-driven assessment methodologies. Selected methods must be appropriate for the specific resource, e.g., recreation and fisheries.

Q. What will WSR designation do to guarantee continuous and adequate flows?

A. WSR designation alone does not guarantee a continuous instream flow, or protect natural flow conditions, as it does not confer any new ownership of water. In areas where quantity of instream flows is at issue, only secured water management agreements, instream flow reservations, or water rights can help ensure minimum flows related to those values for which the river was designated.

WSR designation implies the existence of a federal reserved water right only in quantities necessary to fulfill purposes of the Act. Asserting reserved or claiming non-reserved (appropriative) water rights can establish federal interest in instream flows. However, asserting rights under the Act has been applied very infrequently and is limited in priority to the date of designation. Such an assertion can be considered in river basin adjudications as a basis for claims to water. Once amounts are quantified by the managing agency, the agency can submit its claims for water to the state water court system or a federal court of jurisdiction for adjudication. If found to be a valid claim, such a right entitles the managing agency to the stream conditions as of the time the water right was awarded.

Navigability

Q. Does WSR designation cause a river to be considered navigable under state law?

A. No.

Q. Do states own the bed and banks (submerged lands) on WSRs that have been determined navigable?

A. WSR status has nothing to do with the determination of navigability and ownership of submerged lands. If a waterway was navigable, or could have been ("susceptible"), at the time of statehood, title to the underlying lands automatically passed to the state, unless Congress specifically reserved title. The "equal footing" principle of the Constitution afforded each state rights and privileges, including self-government, judicial

powers, taxation and bonding, as well as the ownership of lands underlying navigable waters within state boundaries. The ownership includes both the lands beneath navigable waters and the natural resources within such lands and waters.

Q. Do states have any special proprietary duties or constraints on their management of beds and banks of navigable rivers?

A. Yes. States have special duties and management constraints with respect to state-owned lands underlying navigable waters. These special duties are contained in the various state constitutions arising from the principles known as the common law public trust doctrine. This doctrine requires states to exercise regulatory authority over navigable riverbeds to ". . . insure that the paramount right of public use of the rivers and riverbeds for navigation, commerce, recreation, and related purposes is not substantially impaired." As a matter of common law, the state holds lands underlying navigable waters in trust for the benefit of the public.

Through time, an ever expanding definition of "public uses" protected by the public trust doctrine is being adopted. The common law public trust doctrine would require the appropriate state agency regulate activities so as not to impair the riverbed for navigation or recreation.

Q. Can the federal government regulate use on adjacent state lands if that use affects WSR values?

A. Yes. The Constitution gives the federal government certain limited powers to control uses on state-owned submerged lands. These powers may be exercised through the Property Clause, Navigational Servitude, and/or Commerce Clause. Specifically, the Property Clause provides that, "Congress shall have the power to make all needful rules and regulations respecting the territory or the property belonging to the United States." Navigational Servitude and the Commerce Clause further provide Congress the authority to regulate navigation and water quality under this clause.

Q. Can the United States control activities occurring on the surface waters of WSRs?

A. Yes. This authority has been upheld through numerous court cases.

Q. If federal regulations become necessary, what factors would a WSR-administering agency consider in regulating activities on adjacent state lands?

A. The federal agency must consider:

1. Whether such authority is constitutional;

2. Whether such authority has been properly delegated to that federal agency, or conversely, whether it has been delegated to some other federal agency;

3. The extent to which the use of the adjacent state lands conflicts with the use of the federal lands;

4. Where there can be demonstrated that a sufficient conflict exists between the regulated use and the intended purpose of the adjacent federal lands; and

5. Whether the federal agency has issued regulations that would control or manage the use.

Q. Are there other federal agencies delegated authority to regulate activities on WSRs?

A. Yes. There are three other principal agencies with authority over WSRs: the EPA has authority to assure water quality; the Army Corps of Engineers (ACOE) has jurisdiction for water resources projects on WSRs; and the FERC has authority to license the construction of dams, water conduits, powerhouses, transmission lines, and other projects under the Federal Power Act.

Hydroelectric and/or Water Resources Projects

Q. Will designation mean there will be restrictions on hydroelectric development?

A. The Act expressly prohibits the FERC from licensing new construction of hydroelectric facilities under the Federal Power Act "on or directly affecting" a designated WSR.

Existing FERC-licensed hydroelectric facilities located on or below/above a designated river segment will be evaluated under the "direct and adverse" standard or the "invade or unreasonably diminish" standard, respectively.

Q. What effect does WSR designation have on other federally assisted water resources projects?

A. Section 7 of the Act prohibits any department or agency of the United States from assisting in the construction of any water resources project that would have a "direct and adverse" effect on the values for which the river was established. It also precludes federal assistance to projects below/above a designated river that have been determined

to "invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present . . . as of the date of designation. . . ."

The "direct and adverse" standard applies to projects within the river corridor, while the "invade or unreasonably diminish" standard applies to projects outside the corridor.

Q. What is the definition of a water resources project?

A. Any hydroelectric facilities licensed under the Federal Power Act, or other federally assisted (constructed, licensed, permitted, funded) projects, which would affect the free-flowing characteristics of a WSR.

Q. What types of projects may fall under the purview of Section 7 of the Act?

A. Examples include, but are not limited to: any dam, water conduit, reservoir, powerhouse, transmission line, or other project works licensed under the Federal Power Act; other federally assisted projects such as dams, water diversion projects, fisheries habitat and watershed restoration/enhancement projects, bridges, roadway construction/reconstruction projects, bank stabilization projects, channelization projects, levee construction, recreation facilities (e.g., boat ramps, fishing piers), and activities that require a Section 404 permit from the ACOE.

Q. Are congressionally authorized study rivers (Section 5(a) of the Act) protected from activities that would affect their free-flowing characteristics?

A. Yes. Section 7(b) of the Act provides the same protection to study rivers authorized by Congress, except that the qualifying word "unreasonably" does not appear before "diminish" for projects located below/above the study segment. The effect is to provide greater protection for study rivers during the shorter-term study process.

Q. Are rivers which are determined eligible or suitable for the National System through agency planning processes (Section 5(d)(1) study rivers) protected from proposed hydroelectric facilities or other federally assisted water resources projects?

A. No. The protection afforded by Section 7(b) of the Act does not apply to Section 5(d)(1) study rivers. However, the managing agency should, within its authorities, protect the values which make the river eligible or suitable.

Q. What is required of the administering agencies under Section 7 of the Act for proposed water resources projects?

A. Administering agencies must evaluate proposed water resources projects under the appropriate standard of Section 7. The result of that evaluation should be provided to the federal proponent or federal agency providing assistance.

A Section 7 determination is not conducted as a NEPA analysis. It is, however, typically conducted in response to another federal agency's permitting or environmental analysis process.

Habitat Enhancement

Q. Can fish and wildlife habitat structures be constructed and placed in WSRs?

A. Generally, yes. Construction and maintenance of minor structures for the protection, conservation, rehabilitation, or enhancement of fish and wildlife habitat are acceptable, provided they do not have a direct and adverse effect on the values of the river, including its free-flowing nature. Structures should be compatible with the river's classification, allow the area to remain natural in appearance, and harmonize with the surrounding environment. An analysis should be conducted to assess the effect on river values.

The following types of structures may be permitted, even though they may affect the free-flowing nature of the river, if:

1. They mimic normal, naturally occurring events (as opposed to catastrophic) such as trees falling in and across the river, boulders falling in or moving down the river course, minor bank sloughing or undercutting, island building, and the opening or closing of existing secondary channels.

2. They do not create unusual hazards or substantially interfere with existing or reasonably anticipated recreation use of the river such as fishing, kayaking, canoeing, rafting, tubing and swimming.

3. They do not prevent naturally occurring events such as bank erosion, channel shifting, island building, and bed load or debris movement.

In addition, the following types of structures may be considered to harmonize with the river environment if:

1. They are made of native materials, e.g., logs, boulders, rocks (not rip-rapping), vegetation, and so forth.

2. Construction materials are kept natural in appearance, e.g., logs with bark as opposed to being peeled.

3. Materials are placed in locations, positions, and quantities which mimic natural conditions.

4. Anchoring materials, cables, rebar, etc., are installed in such a manner as to be visually acceptable.

Q. Does the Act allow for the introduction of non-indigenous species (i.e., game fish or vegetation) which would improve wildlife habitat?

A. The Act does not mention non-indigenous species; however, it does require the protection and enhancement (if possible) of the ORVs for which a river was designated. Unless it is contrary to another law, or the policy of the managing agency, non-indigenous species may be introduced if this would not result in the degradation to either ORVs or other important resource values identified. Indirect impacts on non-indigenous species, -- such as those resulting from additional uses of rivers -- by human or non-human factors must also be considered. Additional guidance for a specific river is usually included in the specific management plan for that river.

Q. Will non-indigenous species present in the river area be removed once the river is designated?

A. Unless non-indigenous species are degrading other important resource values, they generally will not be removed. This is usually the case, especially if the species have been well established and/or are providing an important resource, e.g., introduced species of game fish. Practical considerations, such as the effort or expense of eradicating a non-indigenous species, must also be considered. This issue should be addressed in the management plan.

Q. Will riparian protection programs be improved, or new ones created, to protect rivers from increased public use?

A. A primary objective of WSR designation is to maintain and enhance riparian and other river-related natural values. Specific actions to meet the objective will be determined through the management plan required for each river.

ACQUISITIONS

Acquisitions

Q. Why does the Act contain a land acquisition provision?

A. Land acquisition is one of the ways to protect river values.

Q. How much land can be purchased for a WSR?

A. Section 6(a)(1) of the Act states:

> *The Secretary of the Interior and the Secretary of Agriculture are each authorized to acquire lands and interests in land within the authorized boundaries of any component of the national wild and scenic rivers system designated in Section 3 of this act . . . but he shall not acquire fee title to an average of more than 100 acres per mile on both sides of the rivers.*

This section of the Act authorizes acquisition of fee title to not more than an average of 100 acres per river mile within the corridor, i.e., approximately 50 acres (400-foot strip) from either side of the river bank. If the river is within the boundaries of a national park, wildlife refuge or national forest, nothing in the Act precludes the acquisition of lands via other federal agency authorities or laws within the boundaries of that administering unit.

If 50 percent or more of the river corridor acreage is in public ownership (federal, state, local), this acquisition can only be on a willing seller-willing buyer basis. (See Condemnation Section.)

Q. Does the 100 acre per mile limitation apply to all WSR land acquisition methods, including exchanges and donations?

A. Yes. There is no acreage limitation for easements, however.

Q. Does the 100 acre per mile limitation apply to the purchase of easements?

A. No. The Act does not limit the amount of land that may be acquired through purchase of easements, i.e., acquiring partial rights.

Easements

Q. What is a scenic easement and what is its purpose?

A. Section 16(c) of the Act defines a scenic easement as follows:

> *"Scenic easement" means the right to control the use of land (including the air space above such land) within the authorized boundaries of a component of the wild and scenic river system, for the purpose of protecting the natural qualities of a designated wild, scenic, or recreational river area, but such control shall not affect, without the owner's consent, any regular use exercised prior to the acquisition of the easement.*

Q. Does a scenic easement give the public any right to access, enter on, or use such lands?

A. Generally, no. Depending upon the terms and conditions of each easement, public access rights may or may not be involved. For example, a scenic easement may only involve the protection of narrowly defined visual qualities with no provisions for public use. A trail or road easement by necessity may involve public use provisions. Any provisions for public use of private lands must be specifically purchased from the landowner.

Condemnation

Q. If the purchase of land becomes necessary within a designated WSR corridor, under what conditions is condemnation used?

A. Should the purchase of land become necessary, condemnation is typically a last resort and only used when:

1. Land is clearly needed to protect resource values, or provide necessary access for public recreational use, and a selling price cannot be agreed upon.

2. Needed to clear title to a property as a legal procedure and has nothing to do with government/landowner differences.

Q. Can the government acquire or "take" private land within the river corridor?

A. The objective of WSR designation is to protect and, as possible, enhance the values which caused the river to be designated. Should some proposed or actual use clearly

threaten the ORVs which resulted in the river's designation, negotiated efforts will be pursued to remove the threat through local zoning, state provisions, land exchanges, purchases on a willing-seller/willing-buyer basis, and other actions short of condemnation. Purchasing a partial right (easement) or the property in fee title is usually the last resort. If an easement is purchased, the owner would sell certain development rights and receive a payment, yet retain title to the land. (See Private Lands Section.)

Where an exchange, scenic easement, or voluntary purchase cannot be negotiated and an activity (actual or proposed) threatens or significantly degrades river values or the associated area, the government could pursue condemnation so as to protect the river values which led to designation. Condemnation is rarely used by the federal government and is the last option in protecting the values for which the river was designated.

Q. Are there limitations on the federal government's ability to acquire lands through condemnation under the Act?

A. Section 6(b) of the Act specifically prohibits the use of condemnation for fee title purchase of private lands if 50 percent or more of the acreage within the boundaries on both sides of the designated river are in public ownership (federal, state, or local government). In addition, Section 6(a)(1) of the Act prohibits acquiring more than 100 acres per river mile within the corridor, which is approximately 50 acres on either side of the river bank. Fee title condemnation is allowed to clear title or to acquire conservation, scenic, or other types of easements reasonably necessary for public access.

Section 6(c) of the Act specifically prohibits condemnation for fee title acquisition of lands located within any incorporated city, village, or borough if suitable local zoning ordinances are in place and applicable. Although this section authorizes the appropriate Secretary to issue zoning guidelines, this has not been done due to the many other tools and incentives available, great differences among river settings, and variable local government conditions.

Q. Why has condemnation been so rarely used by the federal government in WSR administration?

A. It is not the government's role or desire (see Management Authority Section) to interfere with, or regulate activities on, private lands in order to meet the intent of the Act. Through the respective agency's land management planning process, landowners' concerns are considered and evaluated as to their compatibility with river values for which the river was designated. Should development of private lands be incompatible with protecting the river, or public access be required (no alternative exists), the government may negotiate with the landowner.

Agencies may acquire properties using appropriated funds under the Land and Water Conservation Fund Act or other authorities. In acquiring scenic easements, no use of private lands would be allowed unless the landowner grants permission. Owners are contacted in order to see if an exchange or voluntary purchase can be negotiated. Scenic easements are usually negotiated by a cadre of personnel who have formal training on techniques to acquire lands.

Q. Will there be condemnation of state lands that are within WSR corridors?

A. No. Lands owned by a state may be acquired only by donation or exchange per Section 6(a)(1) of the Act.

Q. Is the term "just compensation" based on the value of the land (referring to condemnation), or is it based on off-site values that are dependent on that land?

A. Just compensation is based on the fair-market value or appraised value.

Q. Can the federal government force landowners to move from their land because of WSR designation?

A. No. The river study, enabling legislation, and subsequent management planning process will consider how best to protect river values while recognizing private property rights.

Q. What is the federal government's policy and past record on using condemnation authority involving WSRs?

A The federal government has rarely exercised its eminent domain powers with respect to WSRs. Of the four agencies who administer WSRs, condemnation for fee title has been used on only four rivers. Nearly all of the federal government's use of condemnation occurred in the early years of the Act's implementation when the attitudinal climate was one of federal acquisition. Similarly, the use of scenic easement condemnation has also been used very rarely, and then only on seven rivers, all designated prior to 1976.

MANAGEMENT AUTHORITY

Role of the Federal Government

Q. Who manages a WSR? Who administers the various laws? When agency jurisdictions overlap, which agency has the lead? How will procedures under state/federal legislation be coordinated?

A. Designated rivers are administered by one of four federal agencies (BLM, NPS, USFS, USFWS) or the states (for rivers designated under Section 2(a)(ii)). Generally, the specific legislation will indicate an agency to administer each river area or segment in order to minimize overlapping federal agency jurisdictional issues.

For congressionally designated rivers, the administering federal agency is responsible for implementing the requirements of the Act, including the development of a comprehensive management plan for each river within three full fiscal years from the date of designation. On some rivers, including those with overlapping state designations, joint federal/state management plans may be developed. The management plan developed for each river will specifically address the roles of federal, state, local, county, and tribal governments.

Q. How will WSR management plans be developed? When? What are the interim rules? How and when will citizens be involved?

A. The process varies from river to river. When multiple rivers are added through one amendment of the Act, a number of entities (e.g., federal, state and local governments) typically coordinate the development of river management plans on a statewide or regional basis. These entities ensure the overall direction for development of plans, boundaries, interim management, public involvement, and coordination. Some river management plans are jointly developed by federal and state agencies, while other plans may be developed by a single agency with input from others. Advisory committees are often formed locally and will help agencies prepare management plans during river studies.

River management plans should be completed within three full fiscal years of designation. Existing federal, state and local laws remain in effect during the interim, except the federal government will not approve hydroelectric developments on or directly affecting a designated river. Minerals within one-quarter mile of each side of wild river segments are withdrawn from all forms of appropriation under the mining and leasing laws.

Opportunities for citizen input are provided as management plans are developed at the local level. Citizen input by landowners and river user groups is a very important part of the planning process.

Q. Who established the policies under which the land is administered?

A. After Congress designates river areas, the federal agency will develop management plans. Approval of these management plans will include full public participation and review in compliance with the NEPA.

Role of State and Local Governments

Q. What is the state's role on controlling the bed and the banks on rivers determined navigable under state law? What authority do landowners have in controlling use along the banks of a WSR?

A. For rivers determined navigable, the bed and banks to the ordinary high water mark are subject to state laws for public use. Private landowners control public access to their property along the banks of non-navigable rivers. The designation of a river into the National System has no bearing upon the determination of navigability.

Budgeting/Funding

Q. What is the cost of managing designated WSRs?

A. Costs vary according to the complexity of issues and resulting management plan adopted to protect river values. Plan implementation is dependent on the congressional appropriations process and may require that only portions of river management plans be implemented. Reports and information are on file in appropriate federal agency offices.

Q. Will local governments bear any costs of the legislation, such as informational services, enforcement, recreation facilities, zoning or planning revisions, and special studies? If so, will grant monies be available to offset those costs, and how are they

A. The costs of administering WSRs, including the provisions of public information and recreation development -- although primarily a federal responsibility -- should not preclude viable partnerships with local governments and others in developing (where appropriate) information, facilities and programs which foster resource protection. Depending upon the specific river situation, local governments could bear some

additional costs for such things as search and rescue, enforcement, and revisions to local land use plans and zoning. Local governments may also choose to provide public recreation access and recreation facilities on county and other governmental lands. The federal administering agencies lack authority to provide grants for local government recreation facility development.

Appendix A: Glossary

- C -

Coordinated or Concurrent Studies: Wild and Scenic River studies conducted by more than one agency or entity.

Classification: The process whereby designated rivers are classified as wild, scenic, and/or recreational according to criteria established in Section 2(b) of the Wild and Scenic Rivers Act.

- D -

Designation: The process whereby rivers are added to the National Wild and Scenic Rivers System by an act of Congress or by administrative action of the Secretary of the Interior with regard to state-designated rivers under Section 2(a)(ii) of the Wild and Scenic Rivers Act.

- E -

Eligibility: Qualification of a river for inclusion into the National Wild and Scenic Rivers System through the determination (professional judgment) that it is free-flowing and, with its adjacent land area, possesses at least one river-related value considered to be outstandingly remarkable.

- F -

Free-flowing: Existing or flowing in a natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. (Section 15(b) of the Wild and Scenic Rivers Act)

- L -

Limits of Acceptable Change (LAC) System: A framework for establishing acceptable and appropriate resource and social conditions in recreation settings. A system of management planning. Refer to United States Department of Agriculture Forest Service General Technical Report INT-176, January 1985, Intermountain Forest and Range Experiment Station, Ogden, Utah.

- N -

Nationwide Rivers Inventory (NRI): A source list of rivers which have been tentatively determined by the National Park Service and other federal land managing agencies as eligible for the National Wild and Scenic Rivers System.

- O -

Outstandingly Remarkable Values: Values among those listed in Section 1(b) of the Wild and Scenic Rivers Act: ". . . scenic, recreational, geological, fish and wildlife, historical, cultural, or other similar values. . . ." Other similar values which may be considered include botanical, hydrological, paleontological, scientific, or heritage. Professional judgment is used to determine whether values exist to an outstandingly remarkable degree.

- P -

Public Lands and Related Waters: Lands, or interest in lands, administered by the federal agencies. Related waters are waters which lie directly over or adjacent to public lands and require some management control to protect federally administered resources, or to provide for enhanced visitor safety.

- R -

Recreation Opportunity Spectrum (ROS): A continuum used to characterize recreation opportunities in terms of setting, activity and experience opportunities. The spectrum covers a range of recreation opportunities from primitive to urban. With respect to river management planning, ROS represents one possible method for delineating management units or zones. (See Bureau of Land Management Manual Section 8320 for a more detailed discussion.)

River: A flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes (Section 16(a) of the Wild and Scenic Rivers Act).

River Area: For study rivers, that portion of a river (segment or corridor) and its immediate environment comprising a minimum area extending at least one-quarter mile (one-half mile in Alaska) from the ordinary high water mark. For designated rivers, the river and adjacent land within the authorized boundaries.

- *S* -

Study Report: The report on the eligibility and suitability of a study river for the inclusion in the National Wild and Scenic Rivers System. Section 4(a) of the Wild and Scenic Rivers Act requires the Secretary of the Interior, or the Secretary of Agriculture -- or both -- to prepare and submit the report to the President. The President transmits the report with his recommendation(s) to the Congress.

- *W* -

Wild, Scenic, and/or Recreational: The three classes of what is traditionally referred to as a "Wild and Scenic River." Designated river segments are classified as wild, scenic, and/or recreational, but the segments cannot overlap.

Wild and Scenic Rivers Act: National Wild and Scenic Rivers Act ("the Act") of 1968, as amended, Public Law 90-542 (16 U.S.C. 1271-87, et seq.).

Wild and Scenic Study River: Rivers identified in Section 5 of the Wild and Scenic Rivers Act for study as potential additions to the National Wild and Scenic Rivers System. The rivers shall be studied under the provisions of Section 4 of the Wild and Scenic Rivers Act.

Appendix B: Major References

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Appendix C: Selected Associated Statutes, Regulations and Guidelines

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Archaeological Resources Protection Act of 1979; P.L. 96-95; (16 U.S.C. 470as, et seq., as amended; 43 CFR 7)

Clean Air Act of 1970; P.L. 91-604, as amended; (42 U.S.C. 1857-18571; 7401-7671q, et seq., as amended; 40 CFR 50-58)

Department of Transportation Act of 1966; (Section 4)

Endangered Species Act of 1973, as amended; P.L. 93-205; (16 U.S.C. 1531-1544, et seq., as amended)

Federal Water Pollution Control Act of 1977 (Clean Water Act); P.L. 95-217; (33 U.S.C. 1251-1387, et seq., as amended; 33 CFR 320 ff; 40 CFR 15, 100-400, 220-233, 400-471)

Federal Land Policy and Management Act of 1976, as amended; P.L. 94-579 (43 U.S.C. 1701 et seq.)

National Historic Preservation Act of 1966; P.L. 89-665; (16 U.S.C. 470, as amended; 36 CFR 800)

Land and Water Conservation Fund Act of 1965; P.L. 88-578, as amended; (16 U.S.C. 4601 (1-6) et seq.)

McCarran Amendment of July 10, 1952; (43 U.S.C. 666)

Marine Protection, Research and Sanctuaries Act of 1972; P.L. 92-532, Section 103; (Titles 1 & 2 - 33 U.S.C. 1401-1445; Title 3 - 16 U.S.C. 1431-1445)

National Environmental Policy Act of 1969; P.L. 91-190, as amended; (42 U.S.C. 4321, et seq.)

Oregon and California Grant Lands Act of 1937; P.L. 75-876; (43 U.S.C. 1181a, et seq.)

Water and Resources Development Act of 1990; P.L. 101-640; (33 U.S.C. 2201)

Water Resources Planning Act of 1965, as amended; P.L. 89-90; (42 U.S.C. 1962a-(a)(4)(e))

Wild and Scenic Rivers Act of 1968; P.L. 90-542, as amended; (16 U.S.C. 1271-1287, et seq.)

Wilderness Act of 1964; P.L. 88-577; (16 U.S.C. 1131)

Title 36 CFR, Subpart 297 - Wild and Scenic Rivers

Title 43 CFR, Subpart 8350 - Designated National Area (Revision Proposed as Subpart 6400, published at 61 FR 47726-47728, September 10, 1996)

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Protecting Resource Values On Non-Federal Lands

NATIONAL WILD AND SCENIC RIVERS SYSTEM

October 1996
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Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council

Protecting Resource Values On Non-Federal Lands

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Protecting Resource Values On Non-Federal Lands

FOREWORD

This paper is intended to help federal agency staff, wild and scenic river (WSR) study team members, local residents, and community leaders to understand and apply the Wild and Scenic River Act's (Act) protection criteria for river-related resources located outside federal lands. In the second section, this paper provides an outline of the Act's statutory resource protection requirements and the interpretation of this mandate found in the *Department of Interior and Agriculture Interagency Guidelines for Eligibility, Classification and Management of River Areas* (Interagency Guidelines) published in the *Federal Register* (Vol. 47, No. 173; September 7, 1982, pp. 39454-39461). The third section provides a summary of concerns that have been voiced by agency staff and the public over the meaning of these requirements, while the fourth section presents a framework that has been developed by agency staff to resolve resource protection issues. Case study summaries from WSRs across the country are also presented in this section. Finally, the fifth section contains additional technical information about assessing a river's resource-protection needs and applying appropriate resource protection tools.[1]

INTRODUCTION

Standards and procedures for the protection of river-related resources on non-federal lands within WSR corridors[2] are not well defined in the Act. As a consequence, this issue is widely

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[1] **Author's Note:** This paper evolved through peer review of earlier drafts at working meetings of the Interagency Wild and Scenic Rivers Coordinating Council; Council-sponsored public information workshops; and the 1996 American River Management Society Symposium. Its content includes extensive sections contributed by agency staff responsible for WSR river planning and management throughout the country. Additional contributions to the case study and toolbox sections are welcome and will be used when the paper is periodically updated.

[2] For the purposes of this paper, the term "river corridor" is defined as either the 1/2-mile wide study corridor or the area within a designated river's boundaries.

interpreted by agency staff and the public, and the resulting uncertainty creates controversy in WSR planning and administration. Much of this controversy is associated with apprehension about the use of federal land acquisition as the primary protection tool for river-related resources. However, federal land acquisition is not always an appropriate tool for conserving resources located beyond existing federal lands. Thus consistent, practical approaches towards the development of cooperative resource protection strategies are needed if the Act's resource-protection mandate is to be fulfilled.

For study rivers, criteria are needed to measure the adequacy of existing controls in protecting the outstanding resource values identified during the study. The decisions whether to recommend WSR designation, and whether federal land acquisition should be used to help conserve the river's resources, are based in part on this determination. On designated rivers, there is a need for improved guidance to enable federal river managers, state and local governments, and private landowners to work cooperatively towards resource protection goals. Since non-acquisition approaches rely on the voluntary cooperation of local and private interests in order to succeed, it is essential that these groups share in the process of setting resource protection standards and selecting appropriate protection strategies.

STATUTORY BACKGROUND

The mandate to protect a WSR's outstandingly remarkable values (including *land-based* resources such as recreational access, scenery, wildlife habitat, and historic sites) is found in several sections of the Act.

Section 1(b): *It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable . . . values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.*

Section 3(d)(1): *. . . the Federal Agency charged with the administration of each component on the National Wild and Scenic Rivers System shall prepare a comprehensive management plan for such river segment to provide for the protection of the river values. The plan shall address resource protection . . . and other management practices necessary or desirable to achieve the purposes of this Act.*

Section 6(c): *Neither the Secretary of the Interior nor the Secretary of Agriculture may acquire lands by condemnation . . . if such lands are located within any incorporated city, village, or borough which has in force . . a duly adopted, valid zoning ordinance that conforms with the purposes of this Act. . . . [T]he*

appropriate Secretary shall issue guidelines, specifying standards for local zoning ordinances, which are consistent with the purposes of this Act. The standards specified in such guidelines shall have the object of (A) prohibiting new commercial or industrial uses other than commercial or industrial uses which are consistent with the purposes of this Act, and (B) the protection of the bank lands by means of acreage, frontage, and setback requirements on development.

Section 10(a): *Each component . . . shall be administered in such a manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with the public use and enjoyment of these values. In such administration, primary emphasis shall be given to protecting its esthetic, scenic, historic, archaeologic, and scientific features.*

Section 10(e): *The States and their political subdivisions shall be encouraged to cooperate in the planning and administration of components of the system which adjoin State- or County-owned lands.*

Section 11(b)(1): *The Secretary of the Interior, the Secretary of Agriculture, or the head of any Federal agency, shall assist, advise, and cooperate with States or their political subdivisions, landowners, private organizations, or individuals to plan, protect, and manage river resources. . . . This authority applies within or outside a federally administered area and applies to rivers which are components of the Wild and Scenic Rivers System . . .*

Section 12(a): *The Secretary of the Interior, the Secretary of Agriculture, and the head of any other Federal . . . agency having jurisdiction over any lands which include, border upon, or are adjacent to, any river included within the . . . System or under consideration for such inclusion . . . shall take such action respecting management policies, regulations, contract, plans, affecting such lands . . . as may be necessary to protect such rivers in accordance with the purposes of this Act . . .*

Section 12(c): *The head of any agency administering a component of the national wild and scenic rivers system shall cooperate with the Administrator, Environmental Protection Agency, and the appropriate State water pollution control agencies for the purpose of eliminating or diminishing the pollution of waters of the river.*

The Interagency Guidelines interpret this mandate as follows:

> *Land uses and developments on private lands within the river area which were in existence when the river was designated may be permitted to continue. New land uses must be evaluated for their compatibility with the purposes of the Act.*

> *Managing agencies will implement these [management] principles to the fullest extent possible under their general statutory authorities and existing Federal, State and local laws. Because of these limitations, however, implementation of the principles may differ among and within components of the system depending on whether the land areas involved are federally, State, locally, or privately owned.*
>
> *River managers will work with local authorities to abate activities within the river area which are degrading or would degrade existing water quality.*
>
> *Existing patterns of land use and ownership should be maintained, provided they remain consistent with the purposes of the Act. Where land use controls are necessary to protect river values, the managing agency will utilize a full range of land-use control measures including zoning, easements and fee acquisition.*

In summary, there are no explicit standards for resource protection on non-federal lands in the Act or Interagency Guidelines. Neither provides much guidance, apart from the reference in Section 6(c) to zoning guidelines, on the subject of non-acquisition approaches to resource protection. As a result, federal agency staff have had to rely heavily on professional judgement in interpreting and applying the Act and guidelines on WSRs that flow through lands held by state and local governments or private landowners. Several case studies of resource protection approaches that have been used on actual rivers are described later in this paper.

ISSUE-RELATED CONCERNS

In order to resolve the issue of resource protection on non-federal lands, it is important to understand the questions and concerns it raises within riverfront communities. Given that the Act grants authority (albeit limited) to federal river managing agencies for the acquisition of land along designated rivers, it is easy to see why corridor residents become concerned about the methods that will be used to protect river-related resources. To the casual reader of the Act and Interagency Guidelines, their lack of specific information on non-acquisition approaches can lead to the conclusion that there are no alternatives to federal land acquisition. Typical questions raised during river studies and the development of comprehensive management plans include:

- Can the federal government regulate, through zoning or otherwise, the use of non-federal lands in order to protect a river's outstanding resources?

- If the federal government doesn't have zoning power, why do the Interagency Guidelines say, "Where land use controls are necessary to protect river area values, the managing agency will utilize a full range of land-use control measures, including zoning?" That is, *how* will the managing agency go about implementing the land-use control measures?

- Since the formal zoning standards described in Section 6(c) of the Act have never been promulgated, is the use of federal land acquisition to protect resources along the river a certainty if the river is designated?

- My community doesn't have any zoning. Does this mean my land will have to be acquired by the federal government if the river is designated?

- What if my community has great zoning on paper, but poor enforcement?

- Even though formal Section 6(c) zoning standards have never been established, aren't federal agencies using some sort of informal standards to evaluate local zoning? Why can't I find out what those standards are so I can see if I agree with the agency's conclusions?

- Shouldn't the study or plan development team be looking at more than just zoning when it assesses how well resources located on non-federal lands are protected?

- Is it reasonable to think that a single set of zoning guidelines could be developed to protect many different types of river resources throughout the country?

- How can federal agencies recommend designation of rivers flowing through non-federal lands if they have no way of assuring the permanent protection of the resources that make the rivers eligible for this distinction, apart from acquiring a certain number of acres per river mile?

- Lands owned by state and local governments are exempt from zoning laws. Should a river be recommended for designation if these lands could be developed for inappropriate purposes, harming the river's resource values?

- If the federal government already owns an average of 100 acres per river mile along the designated segment, how can the protection of resources located on other lands be assured?

- What's the point of designating a river to protect it from dams and diversions if land use practices on non-federal lands within the entire watershed threaten water quality and other values?

- Why spend millions of dollars to acquire lands within the river corridor, and why spend time and energy developing partnerships with communities to protect areas within a river's boundaries, if the owners of adjacent land can do anything they want, even if it degrades the river's character or resources?

- How can the federal government ensure adequate recreational access to the river if it doesn't own the land?

- Even if the federal government doesn't own my riverfront land, doesn't it have some responsibility to protect me from trespassers?

Few of these questions have easy answers. The fourth section presents summaries of some of the solutions to the resource protection issues that have been developed by agency staff and community partners. For additional explanations, please see the comprehensive Wild and Scenic Rivers Act "*Questions and Answers*" compendium (a separate paper in this publication) prepared by Gary Marsh, the Bureau of Land Management's Washington representative to the Interagency Wild and Scenic Rivers Coordinating Council (Council).

RESOURCE PROTECTION STANDARDS AND APPROACHES

The overall purpose of WSR designation is to protect the nation's outstanding free-flowing rivers and associated resources "for the benefit and enjoyment of existing and future generations." Because designation ensures that a river will not be subject to major new federal water resources projects, including new dams and hydroelectric developments, it can be a strong river protection tool. However, river systems are also affected by a variety of land use decisions and water-related policies over which the federal government has little or no control.

On most rivers, particularly those that have extensive areas of non-federal lands within their watersheds, or where water rights and water quality are major issues, the protection from damage associated with federally authorized projects that is automatically afforded by WSR designation falls short of ensuring the health of the river system as a whole. As outlined earlier in this paper, the Act seeks to compensate for this "protection gap" in part by authorizing the federal acquisition of land or easements within a congressionally designated river's boundaries.[3] However, it is clear from the constraints placed on land acquisition that Congress never intended it to be the only tool available for the protection of land-based resources. For instance, fee acquisition is limited to an average of 100 acres per river mile, and condemnation cannot be used if 50 percent or more of the land within the boundaries is already in public (including state and local) ownership. State-owned lands can be acquired only through donation or exchange. Additional limitations on the use of acquisition and/or condemnation have also been set legislatively for individual rivers when they were added to the National Wild and Scenic Rivers System (National System).

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[3] Unless otherwise provided in law, boundaries can average no more than 320 acres per river mile (640 acres per mile in Alaska).

In addition to these statutory limitations, political and institutional realities also discourage the use of federal land acquisition. The purchase process is frequently slow, expensive and controversial. Funds available to agencies for land acquisition are extremely limited and are subject to annual fluctuations, making it difficult to implement long-term acquisition programs. In many parts of the country, the possibility of federal acquisition -- even through willing-seller, willing-buyer transactions -- can result in a decision not to designate an eligible river, resulting in the potential loss of its free-flowing character to federally authorized dams, hydropower projects, etc. Furthermore, land acquisition is of limited utility in assuring the protection of many important river-related values, including resources influenced by land use outside the river's boundaries (such as wildlife habitat, water quality, and even scenery), and adequate flows, which are dependent on both land use and non-federal allocation decisions. Thus, as a resource protection tool, the federal land acquisition authority provided in the Act is inadequate to fulfill the Act's resource-protection mandate on most, if not all rivers. The additional protection needed to protect such rivers for the benefit and enjoyment of future generations can only be provided through the cooperation of state and local governments, landowners, and other river-related organizations.

Given the flexibility the Act provides, and the need to downplay the role of federal land acquisition along so-called "private lands" rivers, agency planners and river managers have developed various solutions to the resource protection issue. However, these approaches vary regionally and from agency to agency, creating the potential for inconsistency. New study and resource management planning teams may be starting from scratch when workable solutions already exist. In addition, since these approaches have never been formally adopted, they are unknown to potential supporters of additional river designations. As a result, the agencies implementing them can appear to be setting arbitrary river protection goals and using top-down management strategies, undermining the mutual trust needed for river conservation efforts to succeed. The Council can play a strong role in promoting the awareness of workable protection approaches among agency staff, with the goal of promoting consistency while maintaining sufficient flexibility to meet the individual needs of WSRs in a variety of settings.

Below is an outline of the principles used by agency staff to: 1) set resource protection standards, and 2) implement resource protection approaches, on both study and designated WSRs. A summary of working examples of resource protection is included as well.

Resource Protection Standards

Relying on the Act and common sense for guidance, agency staff have developed the following basic principles for use in setting resource protection standards. All four WSR managing agencies accept the following as principles for resource protection.

- The amount of protection needed to protect and enhance a river's "outstandingly remarkable values" (ORVs) varies depending on the resource involved and the topography of the river corridor. More stringent controls might be needed to protect critical habitat, less to protect an isolated historic feature.

- The protection approach should be performance-based, focusing on desired long-term outcomes (or desired future conditions) rather than on simple regulatory formulas. A single setback requirement will not be effective for all resources on all rivers.

- There should be a distinction between protection standards for the immediate riparian zone and the rest of the river corridor. The former should be more stringent to protect riparian structure and function. The latter should address the need to protect and enhance identified resource values, and to prevent undesirable large-scale land use changes.

- The patterns of ownership and land use that exist when a river is designated (e.g., mixed farming and low-density residential uses; rangeland in large holdings; or even urban settlements beyond a forested floodplain), which in turn determine the river's character, should be used to help establish limits for acceptable land use changes. In other words, new buildings along a segment that already has some development are not necessarily unacceptable, provided they are similar in scale and location to pre-existing structures. A build-out analysis may be useful in helping to predict land use changes that will occur based on existing zoning and ownership without additional resource protection measures.

- The river's classification(s) may help provide benchmarks against which potential changes can be measured. In general, protection standards should ensure that a segment's appropriate classification would not change from wild to scenic, or from scenic to recreational, if a new assessment were to be performed.

- The suitability for designation of so-called "private lands" study rivers should be based in part on the adequacy of resource protection that is either already in place or reasonably expected to be provided through means other than federal land acquisition. To help set standards for any additional resource protection measures that may be needed, a "vulnerability analysis" of a river's ORVs, water quality, and free-flowing character can be performed during the study, comparing existing levels of protection to desired future conditions for these resources.

- In setting protection standards for flow- or water quality-dependent ORVs (e.g., recreation, fisheries, and scenery), an instream flow study may be needed to help identify the limits of acceptable flow and water quality changes. Such a study may also help identify management strategies that would enhance water quality and other resource values.

Resource Protection Approaches

To reiterate: The resource protection approaches discussed in this section exclude federal land acquisition. All require the participation of the landowner and/or land use regulating authority (e.g., county or local government) for implementation. Agency staff use the following basic principles to develop and implement resource protection approaches.

- Since states differ in the authorities they delegate to county and local governments, there are regional differences in the kinds of land protection tools available. Resource protection strategies will also vary.

- Resource protection efforts should rely on cooperative approaches, focussing on incentive carrots rather than regulatory sticks (e.g., conserving riverfront land through voluntary conservation easements resulting in property tax reductions, rather than through restrictive regulations).

- WSR suitability requirements can provide an important incentive for local voluntary resource protection efforts. If the federal agency responsible for the river study determines that additional resource protection measures are necessary to ensure that the river's ORVs, water quality, and free-flowing character will be permanently protected and enhanced, communities desiring WSR designation have a strong incentive to implement such measures.

- Specific protection measures can be identified by using a conceptual framework[4] that displays relevant forms of protection for lands within the river corridor. Such forms of protection include land use regulations (e.g., floodplain zoning), critical areas protection laws (e.g., wetlands protection laws), physical barriers to development, and conservation ownership.[5]

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[4] Such as the matrix on the next page, which was developed by a regional planning commission and National Park Service staff to evaluate a 2(a)(ii) designation request for the Westfield River in Massachusetts.

[5] Including land and interests in land owned by state, local or private entities where the clear purpose of such land is conservation.

Town-By-Town Comparison of Existing Protection for the Westfield River, Massachusetts

	Zoning Regulations						Limits to Development		Conservation Lands*** (in acres)			(in miles)		
	River Protect. Overlay	Flood-plain Overlay	Shore Buffer Area	Septic Setback	Special Permit for Struc-ture	Min. Lot Size	Lack of Existing Road Access to River	Physical Con-straints to Dev'ment	State Owner-ship	Federal Owner-ship	Town and Non-profit Lands	Total River Frontage Pro-tected	Public River Frontage Pro-tected	Private River Frontage Pro-tected
Becket	No	Yes	None	N/A	**	2 acres	Yes (WB)	Yes (steep slopes, WB)	88			5.2 WB	.6	4.6
Chester	Yes	Yes*	100'+ flood-plain	150'	Yes	2 acres, 1/4 acre in town center	Yes (parts of WB, MB)	Yes (steep slopes, WB)	6720	1567	151	8.2 MB 16.8 WB	0.0 MB 2.5 WB	8.2 MB 14.3 WB
Chesterfield	Yes	Yes*	100'+ flood-plain	Far as feasible	Yes	2 acres	Yes (EB)	Yes (steep slopes, EB)	2438	2589	205	14.2 EB	7.5 EB	6.7 EB
Cummington	Yes	Yes*	100'+ flood-plain	150'	Yes	2 acres, ½ acre in town	Yes (parts of EB)		608		76	18.2 EB	3.8 EB	14.4 EB
Middlefield	Yes	Yes*	100'+ flood-plain	150'	Yes	2 acres, 1 acre in Ban-croft	Yes (WB)	Yes (steep slopes, WB)			559	5.6 WB 4.6 MB	1.3 WB 0.7 MB	4.3 WB 3.9 MB
Worthington	Yes	Yes*	100'+ flood-plain	Far as feasible	Yes	2 acres	Yes (MB)	Yes (steep slopes, MB)	5428			12.4 MB	2.9 MB	9.5 MB
											Totals	27.6 WB 25.2 MB 32.4 EB	4.4 WB 3.6 MB 11.3 EB	23.2 WB 21.6 MB 21.1 EB

EB = East Branch
MB = Middle Branch
WB = West Branch
* Included in River Protection Zoning Overlay.
** New construction or substantial improvements must not increase flood levels.
*** Acreage breakdown per community are estimates as some conservation land parcels cross municipal boundaries.

Resource Protection Examples[6]

The following examples describe the approaches used by federal agency staff in applying the Act's resource protection requirements on WSRs, or portions of rivers, flowing through non-federal lands. These approaches may vary, depending on: 1) a river's status as a congressionally authorized study river or a so-called "instant" WSR (a river designated without the benefit of a Section 5(a) or (d) study); 2) the extent of institutional support for cooperative river-protection efforts that already existed when the river was designated or the study was authorized; and 3) local and regional experience with, and attitudes toward, land use controls. Such factors can affect the priority agency staff place on building partnerships with landowners and state and local governments, versus working to implement actual resource protection improvements. WSR resource protection is an ongoing process; sometimes it is imperative to build a foundation for cooperative river protection before results can be realized.

Big and Little Darby Creeks, Ohio

Background: The Big and Little Darby Creeks were designated as components of the National System in 1994. These segments had already been designated as Ohio Scenic Rivers when the Governor of Ohio requested national designation under section 2(a)(ii) of the Act, which allows for state and local administration at no expense to the federal government. Apart from the requirements that the river be designated as a wild, scenic, or recreational river by or pursuant to an act of the state legislature, and that it be administered by an agency or political subdivision of the state, the same requirements for designation apply to rivers designated under section 2(a)(ii) as apply to those designated by Congress under section 3(a).

The 556-square mile watershed of the Darby Creeks is located within 25 miles of downtown Columbus, which, with its 1.5 million people, is the largest metropolitan area in Ohio. Approximately 90 percent of riverfront property is privately owned; the Franklin County Metropolitan Park District owns most of the publicly owned lands. Outstanding resources include an exceptionally diverse fish and mollusc community with endangered species in each class; scenic, cultural, and historical values are also considered important resources. The watershed, primarily agricultural in nature, is experiencing encroaching residential development from Columbus.

Based on an evaluation of the eligibility and suitability of the proposed segments, totaling 86 miles, the National Park Service (NPS) recommended that the Secretary of the Interior designate

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[6] Resource protection examples were provided by Council members and the following individuals: U.S. Forest Service -- Steve Mellor, Mollie Chaudet, and Jim Chu; National Park Service -- Jamie Fosburgh, Malcolm Ross, Bill Sharp, and Angie Tornes.

the Big and Little Darby Creeks. During the evaluation process, NPS also formulated some suggestions for enhancing management.

Standards: Since protection of the aquatic resource was the primary goal of those seeking protection of the Darby Creeks, and because riparian corridors are essential to maintaining healthy aquatic habitat, the vulnerability of lands within the riparian zone was evaluated. In addition, the NPS evaluation recommended assessing the aesthetic, cultural and historic values and taking steps to protect those resources.

Approach: The evaluation of resource protection consisted of applying more rigorous criteria in areas of greatest development pressure and less rigorous criteria in more remote locations. Therefore, zoning which protects a minimum 120 feet of naturally vegetated riparian corridor, limits development within the 100-year flood plain, incorporates building setbacks, and restricts septic system placement was evaluated more critically in Franklin and Madison Counties (closest to Columbus). Also taken into consideration were subdivision regulations which protect the river; construction site erosion and storm water control regulations; and lands protected through public ownership, conservation easements, and land trusts.

The protection measures mentioned above were eventually successfully applied to those areas receiving greatest development pressures. The same measures were minimally applied, if at all, in the more remote areas of Union and Pickaway Counties. However, the evaluation also included man-made limitations to development such as roads or railroads paralleling the creeks, and natural limitations to development such as soils unacceptable for septic systems. Due to some building restrictions in one county, and both man-made and natural limitations to development, protection in the more remote areas was found adequate.

In addition to these more direct protection measures, a partnership of local, state and federal agencies and non-governmental entities meet quarterly to present status reports of actions taken under their various programs. Several large grants from federal agencies and private foundations have been awarded to conduct biological, water quality, and soil erosion research, and to develop technical assistance and educational programs relating to sustainable agriculture, erosion control, and stream quality monitoring in the watershed.

Evaluation: Overall awareness of the Darby Creek's ecological importance has increased, as has riparian public land ownership. Research, educational efforts, and monitoring continue. However, no new specific land use protection measures have been adopted in the remaining two counties, one in which residential development pressure from Columbus is being felt. In addition, an increasing concern pertaining to the entire creek area relates to the continued degradation of the cultural landscape, aesthetics, and historical resources.

Upper Delaware River, New York and Pennsylvania

Background: The Upper Delaware River was one of the original rivers identified for study in the Act. One of the few remaining large undammed rivers in the northeast, the Delaware is within a two-hour drive of major population centers in New York, New Jersey, and Pennsylvania. Conflicts over the management of recreation on this river (e.g., access, boater safety, overcrowding, and trash removal) provided the major incentive for designation within riverfront communities. However, because the Upper Delaware was designated before the federal government and local communities had agreed on a management approach, including the delineation of boundaries, it has taken years to develop the sense of trust and cooperation that now exists along this river.

Standards: An early conceptual management plan developed by the Bureau of Outdoor Recreation (whose WSR study functions were later transferred to the NPS) proposed boundaries encompassing a liberal ridge-to-ridge area, including many existing riverfront communities. After the river was designated in 1978, the NPS and the Conference of Upper Delaware Townships (COUP) eventually revised the river's boundaries from 86,000 to under 56,000 acres, excluding some buildable uplands near existing developments. The new boundary includes lands that drain directly to the river or tributaries, from the river landward to the first major topographical feature. Within this area, the river management plan generally uses performance-based standards to guide resource protection decisions. However, the plan also specifies certain land uses that are considered to be inherently incompatible with the protection and enhancement of the river's values.

Approach: There were several attempts, first by the Bureau of Outdoor Recreation and then the NPS, to develop a river management plan before the current plan was produced and accepted in 1986. Early efforts were conducted by agency staff working at a distance from the project area, with little input from local residents and governments. Within the NPS, the planning effort was further complicated by the involvement of staff from both the regional office and the agency's national planning service center. The unfortunate consequence of the project's history was that major opposition to federal involvement in the Upper Delaware Valley solidified around the issue of the river management plan.

The successful 1986 plan was produced by the local advisory group, COUP, working in cooperation with NPS staff. Among other things, it established the Upper Delaware Council, rather than the NPS, as the entity responsible for implementing the management plan. The plan creates a contract between member communities and the NPS, affording such communities local input into resource protection decisions, including federal land acquisition proposals. Acquisition is considered a last resort. Member towns are thus empowered to continue to protect river-related resources their own way, while benefitting from the regional coordination provided by the Upper Delaware Council. Municipalities that have not endorsed the management plan are not members

of the Upper Delaware Council, and have no say in NPS management decisions that may affect them.

The lessons learned on the Upper Delaware (the need to collaborate closely with local residents, and to focus on use of protection tools other than federal land acquisition) have since been applied by agency staff working on other "private lands" WSR studies nationwide.

Evaluation: While some towns continue to oppose the management plan, the majority of the communities (11 out of 15 towns and townships in the two states) along the 73-mile designated segment are members of the Upper Delaware Council. The NPS has acquired only the minimum amount of land that it needs for facilities and river access (under 24 acres as of September 1996). Resource protection efforts have included the monitoring of runoff coming from landfills outside the river's boundaries and coordination with state agencies to improve regulatory oversight.

Upper Deschutes River, Oregon

Background: The Upper Deschutes River was designated under the Omnibus Oregon Wild and Scenic Rivers Act of 1988, without the benefit of a suitability study. Most of the 54-mile designated reach is also protected under the Oregon State Scenic Waterways System. This program, similar to national WSR designation, is designed to protect and enhance scenic, natural, aesthetic, recreation, scientific, and fish and wildlife qualities. It requires preconstruction review of proposed new development or changes in existing land uses.

Approximately 23 percent of land along the Upper Deschutes is in private ownership. Nearly 3,000 private parcels existed within 1/4-mile of the river at the time of its designation. Having been platted prior to the river's designation, many of these parcels have since been developed into year-round and vacation residences.

In addition to land use issues, resource protection standards were needed to address the challenge of protecting flow-dependent resources on the Deschutes, where all of the river's natural and stored flows had already been allocated to out-of-stream uses.

Standards and Approach: A joint river management plan was developed by 18 different governmental or quasi-governmental authorities. This comprehensive river management plan serves all of the cooperators. Important elements include:

- An interagency "stewardship team" to provide assistance to private landowners in appropriate development practices to protect and enhance river values and to seek methods to streamline the permitting process.

- An adaptive management strategy for increasing winter instream flows and reducing flow fluctuation over the long term.

The cooperative approach to river administration recognized that key issues which affect river values, such as management of flows and private land development, could only be addressed with the willing participation of all appropriate authorities. These authorities include other federal agencies (e.g., Army Corps of Engineers), tribal governments, various state agencies (e.g., the Oregon Parks and Recreation Department, Oregon Department of Fish and Wildlife), Deschutes County, and the irrigation districts. The following premises describe the approaches to dealing with water quantity and quality and private lands:

1) Water quantity and quality issues are addressed through a voluntary adaptive management approach. Studies conducted by the Bureau of Reclamation (BOR) have shown that conservation measures, although expensive, could result in sufficient water savings from which to significantly improve winter instream flows and the reliability of water to irrigation users. Other methods of improving instream flow, such as water leasing and purchase from willing sellers, have been demonstrated in other portions of the Deschutes Basin and were also explored. The river management plan identifies a set of strategies which include experimentation with release rates and the identification of long-term targets for instream flow. As water is made available through conservation, lease or purchase of water will be used to provide incremental increases in winter flows. These strategies will be evaluated periodically to determine their effectiveness in reaching the resource condition goals identified in the plan.

2) Private lands are addressed by focusing on future potential for development and working cooperatively with private landowners to identify and implement development compatible with protecting and enhancing river values. The State Scenic Waterway Program and Deschutes County provide most of the regulation for private land uses within the river corridor. During the planning process, an interagency team reviewed the standards for future development and found that existing setbacks, zoning ordinances, and design reviews were sufficient to protect river values. Existing setbacks are 100 feet, commercial development is prohibited, height limitations are consistent with State Scenic Waterway administrative rules, and new residential development must be 10 acres or greater.

   The interagency team recommended that county ordinances be modified to reflect the use of "bioengineering" techniques for streambank stability and erosion control. Because the Deschutes' flow regime is significantly modified by upstream dam operation, winter flows are unnaturally low due to storage and the summer irrigation season produces high flows equivalent to a 25-year flood event. More specifically, a number of agencies cooperated to prepare a brochure which explains to landowners the importance of

riparian zones and the improved long-term effectiveness of bioengineering techniques to protect their property. This program also includes technical assistance and financial support of demonstration projects.

Evaluation: Implementation of key aspects of this plan is already underway, though it is not yet final (the target date was July 1996). The entities involved in developing the plan (many state, local and federal agencies, along with members of the public) have demonstrated an extraordinary willingness to cooperate and to ensure consistent river management during the planning period. Some activities that are currently under way include: experimentation with release rates and related monitoring; a joint conservation effort by the BOR and one irrigation district to conserve water and turn the savings into instream flows; completion of a successful pilot streambank stabilization project; and a more efficient building permit process that recognizes the shared river management goals.

While the plan sets ambitious goals, the partnerships forged during the planning process will provide the framework for successful implementation of the plan. Its success also depends on the partners and the community keeping river stewardship a high priority and working to achieve commensurate funding.

Farmington River, Connecticut

Background: Designated in 1994, the Farmington River flows through a hilly, densely forested region of northwestern Connecticut. Adjacent lands are principally in private ownership, although substantial acreages are held by Hartford's regional water supply utility. Two state forests are also located along the segment, a recreational asset prized by fly fishermen, canoeists, kayakers, etc.

The Farmington WSR study was initiated by valley residents who were concerned by proposals to expand Hartford's regional water supply to include existing, inactive reservoirs on the river's West Branch. They feared that water withdrawals would harm the river's pristine water quality, destroy its value as a cold-water fishery, impede Atlantic salmon restoration efforts, and reduce the quality of recreation. However, they were also concerned about the Act's land acquisition authority, and were leery of the "traditional" designation approach which could result in the creation of a new park unit. Direction provided in the legislative history of the study authorization, along with the control over the study provided by a federal advisory committee (FAC) appointed to work with the NPS on the study, served to defuse some of these concerns.

Standards: As part of the study, information about existing forms of resource protection within the river corridor was analyzed to determine whether the Farmington's outstanding values were adequately protected. Through this vulnerability analysis, the study team identified the need for

additional shoreland protection on private lands along the river since few existing measures protected resources such as riparian habitat, water quality, and scenery. To protect the segment's ORVs and water quality, control over the placement of new structures and septic systems within a 100-foot wide buffer zone was needed, along with strict limitations on vegetative cutting and sand and gravel removal.

The team also developed a standard for instream flows to protect and enhance the segment's outstanding fishery and recreational opportunities. To do this, existing recreational use was quantified (by calculating the number of days of optimum and minimum conditions during appropriate seasons for four different forms of recreation that occurred during representative years). The flows needed to sustain this use, along with flows needed to protect fisheries (using instream flow incremental methodology) were also identified. State water allocation authorities and a major water utility committed themselves to the protection of these flows.

Approach: Riverfront overlay zoning districts were drafted by the NPS at the request of local governments and in cooperation with the FAC. All of the riverfront towns along the segment adopted these districts prior to designation. This action "earned" the towns a favorable suitability finding and established their commitment to protecting the river without the need for federal land acquisition. Accordingly, the river designation act preempted the national Act's federal land acquisition authority. This was based both on a Section 6(c) finding, and, more important, a finding that all ORVs were sufficiently protected through new and existing actions by the state and local governments.[7]

A voluntary private land protection program was also initiated during the study through a cooperative agreement between the NPS and the Trust for Public Lands (TPL). Working with local land trusts and the Farmington River Watershed Association, the TPL conducted landowner workshops on the benefits and financial consequences of conservation easement donation.

The NPS/FAC study team conducted an instream flow study in cooperation with the state and the water utility most likely to need additional supplies from the river. Both state regulators and the utility voluntarily agreed to maintain the flows needed to protect and enhance flow-dependent ORVs. State water quality authorities also committed themselves to a non-degradation policy for new point source discharges along the segment.

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[7] Section 6(c) focusses on the adequacy of a single resource protection mechanism, zoning, and further limits the analysis to an examination of whether new commercial and industrial uses are restricted and whether the "bank lands" are protected through setback, frontage and acreage requirements. The agency staff and the FAC who worked on this study believed that a favorable suitability finding should be based on the protection afforded to all ORVs, plus the river's water quality and free-flowing character. While development density and dimensional requirements, and the prohibition of commercial and industrial uses, may help to protect many ORVs, a suitability finding should be based on a comprehensive examination of the river's resource protection needs.

Evaluation: All of the above resource protection measures, plus many others, were identified during preparation of the river management plan, which was completed and endorsed by the NPS, the FAC, study area towns, and the state *before* the river was designated. This ensured that all river protection partners had a strong, voluntary commitment to resource protection, relieving the NPS of the role as enforcer of state and local protection programs not directly within its control. By requiring landowners and state and local governments to "ante into the river protection pot" before granting them the protection from direct and adverse federal projects that they desired, this strategy also ensured that designation without federal land acquisition would not be a meaningless endeavor.

The coordinating committee identified as co-administrator of the river in the designation legislation began meeting in September 1995. The management plan it will implement represents a contract by and between all of the entities whose actions and policies can affect the river and its resources.

Lamprey River, New Hampshire[8]

Background: A Section 5(a) study was initiated on this "private lands" river in southeastern New Hampshire in 1992. The Lamprey flows through areas dependent on forestry, farming, and small-scale mill operations since early Colonial times. Despite this long-term pattern of settlement, the river corridor shows little evidence of human alteration apart from scattered houses, occasional road crossings, and two National Register-listed historic mill dams. A proposal to construct a hydroelectric facility at one of these sites was the spark which galvanized local pursuit of the study.

Standards: All riverfront towns were found to have existing 100- to 125-foot setbacks for new, non-water-related structures. Most towns also regulate vegetative cutting along the river, and the one which does not is covered by the state vegetative cutting law, which requires that any timber harvesting within a 150-foot wide riparian buffer zone be done so as to retain a "well distributed" stand of trees. Based on this, recommended actions for resource protection include maintaining riparian integrity; emphasizing education and improved enforcement of existing laws; standardizing 125-foot septic system setbacks in all communities; and creating a local, voluntary program to protect riverfront lands with the highest wildlife and natural values using conservation easements, etc.

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[8]The Lamprey River is one of the newest additions to the National System. An 11.5-mile segment was designated by Congress in October 1996.

Approach: The NPS conducted the study in close cooperation with a local advisory committee, town governments, and state and regional planning agencies. All were involved in the analysis of existing resource protection and formulation of recommendations. A plan developed during the study and based on these findings will serve as the comprehensive management plan when the river is designated. Separate votes approving the management plan were secured in each of the communities along the segment. The Lamprey designation legislation retains the Act's willing seller and donor land acquisition authority but excludes the use of eminent domain.

Evaluation: Although the river has just received Congressional designation, local efforts to pursue resource conservation goals have already resulted in the acquisition of two key river-front parcels by town governments, along with the donation of a conservation easement on a third, private parcel. Research on local turtle and mussel populations initiated during the study has also continued, as have voluntary efforts to monitor riverfront development proposals. Implementation of the river management plan will only enhance the positive momentum generated during the study period.

Maurice River, New Jersey

Background: The Maurice River and several tributaries were the subject of a 5(a) study conducted by the NPS which culminated in designation of the river(s) in 1993. Originating in the New Jersey Pine Barrens, the Maurice flows through forest and marshes before reaching Delaware Bay. Its estuary provides significant wildlife habitat and is partially protected as a national wildlife refuge. The remainder of the river corridor is in non-federal ownership.

Standards: The focus of protection in the local management plan prepared during the study was on the creation of a river conservation zone that established consistent land use policies among the riverfront municipalities. This zone is composed of two subareas: a resource protection district and a development district. It is based upon seven areas of environmental and economic importance identified as relevant to municipal land use regulation and river management, including septic system pollution, wetland protection, control of erosion and sedimentation, control of "other" water pollutants, protection of upland habitat, protection of visual buffers, and promotion of economic vitality.

Approach: A draft of the River Conservation Overlay Zone (which establishes substantive and procedural requirements for permitted uses, including dimensional requirements such as setbacks and densities, and procedural requirements for site plan review, special permits, etc.) was developed in collaboration with local communities during the study. Each municipality has adopted a version of the draft zone, with riverfront setbacks ranging from 300 to 500 feet. The river's suitability for designation was based on each municipality's commitment to adopt these land use controls, as expressed through passage of municipal resolutions. The designation act

documented the finding that the proposed zoning would comply with 6(c) standards, preempting federal acquisition on this river.

In addition, the local management plan and the final study report identify six critical natural resource areas requiring protection beyond that provided through local land use regulation. Implementation of protection in these areas will be facilitated, at the communities' request, by the NPS. The agency will serve as an advocate in regional efforts to create a conservation program, establish visitor welcome and interpretive facilities, and streamline the land use permitting process.

Evaluation: The adoption of the local management plan has resulted in the enhanced protection of two critical areas through strengthened municipal land use regulation; initiation of negotiations for the protection of two other critical areas, one through state acquisition and the other through land trust protection; initiation of a landowner conservation program through education and easements (under development); increased coordination between state and federal regulators; and the placement of stream crossing signs. New Jersey's conservation program, Green Acres, has targeted the Maurice River as a priority area for land acquisition as a result of designation. Unresolved issues include the potential for zoning variances to degrade the river's resources, the uncertainty of ongoing financial and administrative support from the NPS, and the qualified support of local officials.

Skagit River, Washington

Background: Portions of the river and its tributaries were identified for study in the original Act and were designated in 1978. The designated reach includes portions of the Suiattle, Sauk, Cascade and Skagit Rivers, is approximately 158.5 miles long, and has about 39,000 acres within the river corridor. About one-half of the designated area is in private ownership, including portions of the lower Sauk, Suiattle, and Cascade, and the Skagit mainstem.

Standard: The objective of the river management plan is to protect and enhance the ORVs: wildlife (the third largest wintering bald eagle population in the continental United States), fisheries (five species of salmon and three species of sea-going trout), and scenic quality. The 1977 *Skagit Final Environmental Impact Statement* (associated with the congressionally authorized study) recommended that the state of Washington administer the mainstem Skagit segment, with the U.S. Forest Service (USFS) administering the other three rivers. State administration was to be implemented through action of its legislature and cooperative agreements between the state and federal governments. Due to administrative and priority changes within the state, such legislation did not occur. However, the state/federal partnership approach and the use of cooperative agreements remain important aspects of present river administration.

Approach: The river management plan has been implemented through a partnership between the USFS and appropriate county, state, and federal agencies, along with tribal governments. This approach relies on working cooperatively with these other agencies and landowners to develop necessary river protection strategies. For instance, USFS staff are working under the umbrella of the Washington Growth Management Act, which requires that the largest and fastest growing counties in the state do extensive planning related to statewide goals. USFS staff serve on a Technical Advisory Board, formed pursuant to the Washington Growth Management Act, which is responsible for development of criteria for Forest Zoning and the identification of critical areas (wetlands, aquifer recharge areas, geologically hazardous areas, frequently flooded areas, and fish and wildlife conservation areas). This board also includes other government agencies, tribes, landowners, environmental organizations, and development interests.

Similarly, USFS staff are participating with private landowners, other agencies, industry, and tribes, in the on-the-ground review of timber harvest activities both inside and outside the river corridor, helping to identify mitigation measures to protect river values. This review process, mandated by state legislation, allows state and federal agencies and the public to review forest practice applications and to provide comments and suggested mitigation related to their concerns.

Many activities that occur within and outside the river corridor can affect river values. To address this, the USFS has cooperated with the Environmental Protection Agency (EPA) and the Skagit Systems Cooperative (biologists representing the Upper Skagit, Sauk-Suiattle, and Swinomish tribes) in developing a Skagit River Basin water quality monitoring plan. Currently, efforts are underway to implement this plan by expanding the Skagit Watershed Education Program, which seeks to educate fourth and fifth graders about their watershed. The program will be expanded to include a water quality monitoring component, utilizing volunteers from the local community and schools. Volunteers will be responsible for conducting a variety of surveys to determine watershed health.

USFS staff also initiated a watershed working group with Skagit Systems Cooperative; Skagit County; Skagit Conservation District; EPA; NPS; U.S. Fish and Wildlife Service; Army Corps of Engineers; the Washington State Departments of Natural Resources, Ecology, and Fish and Wildlife; and Seattle City Light (the utility that manages three dams on the upstream Skagit River). This group has worked to set priorities for watershed restoration. During the past two years, over $1.75 million of state and federal funds have been spent in the basin for watershed restoration and fisheries enhancement. Projects to date have included fish passage and habitat improvements, road abandonment, and road reconstruction.

To protect and enhance the wildlife resource, the USFS and North Cascades Institute have developed the "Eagle Watcher" program, an environmental education program to train volunteers to provide eagle information to river users. During the three years of this program, over 150 volunteers have been trained, and have provided information to over 20,000 visitors to the Skagit

River. The volunteers provide information about bald eagle biology as well as appropriate viewing techniques to minimize impacts on eagle feeding. USFS staff have also helped organize an annual Bald Eagle Festival, increasing tourism and revenue to the upper Skagit River area during an otherwise less popular time of year.

Land acquisition from willing sellers has also been effective in protecting the river's values. USFS staff have worked with non-profit groups, including The Nature Conservancy and River Network, to purchase key parcels that might have faced unacceptable development. To date, over 3,100 acres have been acquired.

Evaluation: The USFS has helped increase understanding of the WSRs program and its intent as applied to the Skagit River system. Importantly, the USFS has become the coordinator/ facilitator for many issues and programs in the Skagit basin. The complex land ownership pattern in the basin presents an inherent limitation to WSR administration. Other agencies, upon whom the USFS relies for the regulation of non-federal land use, are not always able to provide adequate review and enforcement. This has increased the need of USFS staff to effect formal and informal partnerships within the community. These partnerships will be of even greater importance as funding and staffing of all agencies becomes more limited.

Sudbury, Assabet, and Concord Rivers, Massachusetts[9]

Background: A Section 5(a) study of these rivers, located only 25 miles west of downtown Boston and within an hour's drive of 2-3 million people, was initiated by residents concerned about the impacts of a possible re-activation of dormant upstream reservoirs to supply the metropolitan area with water. Growth pressures within the eight communities that lie along the 29-mile study area were also perceived to be a problem. Possessing good schools, small town lifestyles, and located within an easy commute of regional high-tech centers, these towns were in danger of losing their sense of place, which is based in part on the health of the rivers flowing through them. A WSR study was seen as an opportunity to strengthen local control over state and federal land and water use policies, and to increase inter-town communication and cooperation.

Standards: During the WSR study, protection standards for the outstanding resources that make these rivers eligible for designation were developed and included in a river conservation plan. These standards were based on the goal of protecting and enhancing each resource value over the long term. The rivers' outstanding resources include: scenery considered noteworthy by the state; easily accessible, portage-free recreation; nationally significant aquatic and riparian

[9] Legislation for designation was filed in 1996.

wildlife habitat; historical and archaeological sites associated with early colonization, Native American cultures, and the revolutionary "shot heard 'round the world;" and literary values associated with the nineteenth century transcendentalist movement.

For scenic values, the goal was to prevent major alterations in the river corridor landscape, such as the loss of forested hillsides or the construction of conspicuous houses in upland meadows. Other forms of development incompatible with existing land use patterns (e.g., shopping malls, factories, or other intensive land uses at the rivers' edge) were also considered incompatible with designation. The standard of protection for recreation included the need to protect existing access points on non-federal lands. For ecological resources, the goal was to prevent reasonably foreseeable and preventable losses in the diversity, distribution, or populations of native species.

Historical and archaeological sites, along with literary values, were considered to be adequately protected if the patterns of land ownership and regulatory status (e.g., National Register listing) associated with these sites would prevent their loss through inappropriate development.

The river conservation plan also recommends several activities that will enhance the rivers' resources. These include: 1) development of a recreation management plan by the state and river towns, with the assistance of the River Stewardship Council that will be created when the river is designated, to reduce recreational use conflicts; 2) landowner education programs to improve riparian land stewardship; and 3) the development of educational and interpretive materials associated with the rivers' history, literary heritage, and ecological values.

Approach: Because the river study team (NPS and a FAC) was explicitly discouraged by Congress from considering federal land acquisition as a potential resource protection tool for these rivers, the team knew from the outset that the rivers could only be found suitable for designation if other alternatives were used to protect their resources. The team decided to survey the entire 58 miles of shoreline within the study area to determine where ORVs were located and whether associated lands were protected from inappropriate development. A subcommittee, including the NPS, town staff, and other local experts, was formed to work within each of the eight municipalities to pinpoint vulnerable parcels.

These standards outlined above were applied in the parcel-by-parcel vulnerability analysis. Each parcel's ownership, topography, and regulatory setting was evaluated to determine if any potential increases in land use intensity or inappropriate changes in land use type were possible. Most parcels extend more than 100 feet from the river, and significant acreages (over 56 percent of the total frontage) were found to be protected through existing ownership by the U.S. Fish and Wildlife Service, the state, towns, and local land trusts. The analysis did not include "ridge-to-ridge" survey except where distinctive landscapes were present.

For private, non-conservation land, the team came to the following conclusions: 1) In general, a dense hardwood/softwood forest canopy greatly exceeds the 30-35 foot maximum residential building height along rivers (most land is zoned residential), screening both existing buildings and potential new construction; 2) that, due to the flat terrain along the study segments (the floodplain is over 1.5 miles wide in some areas), strong state regulatory protection for bordering wetlands, and local floodplain zoning that exceeds Federal Emergency Management Agency (FEMA) minimums in most towns, major new development or even substantial alteration of existing buildings along the rivers is unlikely; and 3) there are no large subdividable parcels along the river segments. Thus the team found that no additional resource protection measures were required for the rivers to be found suitable for designation.

The FAC as a whole reviewed and endorsed these findings. Concurrently, a management plan was prepared that included recommendations (rather than requirements) for additional resource protection by local, state and federal governments, and riverfront landowners. This plan, which will serve as the comprehensive management plan when the rivers are designated, was endorsed by study area residents through town meeting votes requesting congressional designation.

Evaluation: While river designation legislation has not yet been passed by Congress (as of October 1996), local efforts to implement the river management plan have already begun. Pursuant to suggestions made by WSR study participants during the local permitting process, a residential subdivision on one of the few undeveloped parcels along the rivers has been redesigned. A naturally vegetated riparian buffer will be retained, and car top boating access to the river will be provided at the site. Planning assistance is also being provided by the state and federal governments to the eight riverfront towns, helping them to focus on the protection of river values in updates of their local open space plans. These plans will make them eligible for state funding for open space acquisition. After the rivers are designated, the effectiveness of these and other resource protection efforts is expected to be enhanced once the River Stewardship Council convenes.

White Salmon River, Washington

Background: The Lower White Salmon is an "instantly designated" WSR that was entirely in private ownership at the time of its designation. The designated portion of the river is only 7.7 miles long, out of a total of around 45 mainstem miles, within a 400-square-mile watershed.

Standard: The management plan for this river was developed by a broad-based task force that sought to achieve consensus on river management issues, focusing on the management of private lands as well as instream and river recreation issues. The resulting river management plan seeks to balance two broad goals: 1) to maintain and enhance the economic viability of existing natural resource uses and respect private property and tribal rights; while 2) conserving and enhancing

land-based biological and physical resources such as canyon ecology, species diversity, historical and archaeological resources, and scenic quality.

As a result of the river management planning process, the county agreed to adopt new zoning and shoreline requirements, including: 1) a 100-foot riparian setback for any development; 2) a minimum 1320-foot frontage requirement for residential development along the shorelines; and 3) average lot sizes of 20 acres. The 100-foot setback pertains to timber harvesting and other vegetative manipulation, intensive grazing, construction, road building, and septic system placement. The frontage requirement was established to help achieve minimum lot size and to reduce visual impacts on river users, based on the user perception that over four houses per river mile along one side of the river would degrade river used experience and the existing natural setting. The 20-acre minimum lot size was based on the goal of maintaining workable acreage for the natural resource-based economy and lifestyle within the watershed.

While the 100-foot setback helps to maintain river values, the river management plan had identified the need for a 200-foot riparian setback. This setback was based on the need to protect water quality along the segment. Extensive water pollution studies in the Lacamas Lake Basin (a rapidly-developed rural area in an adjacent county) indicated that a minimum 200-foot buffer was needed to prevent water pollution where housing densities approached one unit per five acres. In addition, the 200-foot setback included at least 90 percent of all the stream-adjacent slopes that had the potential for direct surface runoff into the mainstem of the White Salmon. The USFS and the county are currently working on methods to achieve a setback consistent with the intent of the river management plan.

Approach: The river management plan is being implemented in cooperation with the state, county, private groups, Yakima Indian Nation, river users, and landowners, and includes a significant USFS land acquisition program through exchange and purchase from willing sellers. In addition to the changes in zoning within the river corridor, county and state agencies have also developed and implemented more restrictive upland requirements. This effort was initiated and supported by the USFS through cooperative agreements and technical assistance.

One result of the management planning process was the creation of a watershed-wide management committee, formed under the auspices of the local Conservation District and the Natural Resources Conservation Service. The watershed management committee in turn developed a water quality and improvement plan, implemented by the state and local governments, landowners, user groups, and conservation organizations. Support for this effort in excess of half a million dollars has been obtained by the watershed management committee in just over three years.

Examples of specific projects include: major annual river cleanups; an environmental education program for local school districts focusing on water quality in the watershed; the establishment

of a county adopt-a-stream program; a water quality monitoring study and riparian inventory within the entire watershed; a groundwater and septic system study; riparian fencing; bank stabilization; the development of dairy waste control systems; the assessment of a major tributary watershed by Champion International and Washington State Department of Natural Resources to address timber harvesting concerns in this critical sub-basin; the placement of bird and bat boxes to help reduce use of pesticides within the watershed; upland tree planting; and the establishment of a Washington State Conservation Corps for work within the watershed. The group continues to apply for additional grants.

Evaluation: The USFS's ability to protect and enhance the river's values has been limited by inadequate funding for river administration and an inability to effect the planned land acquisition program. Conservation groups are very concerned and vocal about the agency's perceived lack of river advocacy. Similarly, due to the delay in implementing the federal components of the river management plan, the county has not implemented some of the restrictions agreed upon during the river planning process. Enforcement of existing regulations is inconsistent. Importantly, however, through the cooperation of landowners, the watershed management committee, and the Conservation District, a number of significant and far-reaching improvements have been developed and implemented. Thus an effective partnership has been established for future projects.

Wildcat Brook, New Hampshire

Background: The Wildcat drains a designated wilderness within White Mountain National Forest before flowing through the resort community of Jackson, New Hampshire. Jackson was developed as a resort in the 1800s and has retained many historic hotels and inns along the Wildcat, particularly in the vicinity of a series of cascades and waterfalls just above the village proper. In the early 1980s, proposals to construct hydropower facilities at the falls, which would have destroyed their scenic value and dewatered portions of the river, spurred local interest in a WSR study.

Standards: The vulnerability of lands within the riparian zone was evaluated. Since the Wildcat runs through a cultural landscape which has changed little in the past century, the focus was on privately owned riparian parcels with a high potential for new development that would be incompatible with existing historic buildings or that would impair riparian integrity, water quality, etc. Another goal was to maintain appropriate public access to local parkland at the waterfall and a riverfront meadow in the town center.

Approach: Several resource protection approaches were used. Conservation easements were obtained for many otherwise developable parcels. New zoning ordinances were also adopted: floodplain zoning, which includes a 75-foot building setback from the river even when this area

is not in the FEMA-mapped 100-year floodplain; and soils-based density zones, which serve to reduce the likelihood of water quality degradation.

Evaluation: Because its members serve fixed terms, the Wildcat Brook Advisory Commission has seen a 100 percent turnover in membership since the river was designated. While this has created the need for continuous re-education of the Wildcat Brook Advisory Commission about the Act's requirements and limitations concerning the use of private lands along the river, designation has succeeded in helping Jackson conserve one of the town's principal natural features. This effort has been enhanced by the continued involvement of key members of the study team as unofficial watchdogs, and by the participation of USFS representatives on the Wildcat Brook Advisory Commission.

RESOURCE PROTECTION TOOLBOX

There are a variety of mechanisms that can provide protection for land-based, river-related resources. These range from proscriptive laws and regulations (e.g., floodplain zoning and river protection overlay districts), through incentive programs, to purely voluntary measures (e.g., maintaining natural buffers between the river and lawns or cultivated fields).

In general, regulatory approaches work best in areas that already have relatively complex land use laws. Such approaches require adequate enforcement in order to be effective, and are more likely to be accepted and implemented in semi-rural or suburban communities than in more sparsely developed areas.

Incentive programs can be effective in areas where the local, state, or federal government has something of value to offer to the landowner in exchange for the surrender of certain property rights. For example, local property tax reductions provide the incentive to keep agricultural or forest lands from being subdivided, while federal income tax deductions encourage land-owners to donate conservation easements. There are many other federal incentive programs -- e.g., the "Sodbuster," "Swampbuster," and livestock waste management requirements that are tied to agricultural loan programs, and the "Safe Harbors" program under the Endangered Species Act -- that can also help protect river-related values.

Purely voluntary measures are most likely to be implemented in areas where landowners value their ability to serve as resource stewards more than they value their freedom to do whatever they want with their land. Such attitudes usually require a good understanding about the effects of land use practices on natural resources. Environmental education programs can therefore help to encourage the use of voluntary conservation measures. In areas where the stewardship ethic is strong, a social atmosphere is created that supports and rewards this kind of behavior,

censuring those who do not conform to the stewardship ideal. These social pressures are more likely to encourage sound stewardship in close-knit communities, where land changes hands infrequently and there are few absentee owners, than in rapidly developing or resort areas.

In choosing appropriate resource protection strategies, river conservation professionals thus need to understand three major factors: 1) the nature of the resource to be protected; 2) the nature of the threat to the resource; and 3) the social context within which the protection strategy will be applied.

The sections below outline many of the regulatory, incentive and voluntary programs that can be used to protect river-related values. Major resource categories that benefit from each measure are listed in italics. This section cannot and does not include every potential means of protecting land-based resources, however, and the benefitting resources listings are intentionally broad. More information about assessing the adequacy of existing river resource protection follows.

Regulatory Measures

Local Laws and Regulations

River corridor protection zone	*riparian function, water quality, scenery*
Building setback requirements	*water quality, scenery*
Minimum river frontage requirements	*water quality, scenery*
Minimum lot size requirements (including requirements that a minimum percentage of each lot be contiguous, buildable upland rather than wetlands or floodplain)	*riparian function, scenery, water quality*
Natural vegetation retention requirements	*riparian function, scenery, water quality*
Septic system setback and percolation rate standards	*water quality, undeveloped character*
Earth excavation restrictions	*water quality, scenery*
Subdivision provisions	*riparian function, scenery, water quality*
Site plan review requirements	*water quality, scenery*

Use zoning (e.g. allowing agricultural and residential use, prohibiting commercial or industrial uses)	*water quality, scenery, undeveloped character*
Maximum building height requirements -- measured from grade at **river** frontage rather than street frontage	*scenery*
Floodplain zoning	*riparian function, scenery, water quality, free-flow*
Stormwater, sedimentation, and erosion control regulations	*water quality*
Public open space subdivision requirements	*scenery, riparian function*
Maximum slope requirements	*water quality, undeveloped character*
Cluster zoning	*riparian function, scenery, water quality*
Local wetlands protection laws	*water quality, riparian function, undeveloped character*
State Laws and Regulations	
Wetlands protection	*water quality, riparian function, undeveloped character*
Uniform shorelands zoning	*riparian function, scenery, undeveloped character*
State scenic river designation	*riparian function, scenery, undeveloped character*
Water quality classification and discharge standards (e.g., Class A, non-degradation and/or ORW designation)	*water quality*
Septic system setback and percolation rate standards	*water quality, undeveloped character*

Timber harvest restrictions	*water quality, riparian function, scenery*
Current use assessments	*undeveloped character*
State environmental impact analysis laws	*water quality, riparian function*
Terrain alteration permits (size threshold)	*water quality, riparian function*

Federal Laws and Regulations

National Environmental Policy Act	*water quality*
National Flood Insurance Program (applies indirectly to communities and banks rather than the landowner)	*water quality, riparian function, undeveloped character*
Clean Water Act	*water quality, navigability*
Rivers and Harbors Act	*recreational access/navigability*
Endangered Species Act	*riparian function, wildlife habitat, scenery*
Wild and Scenic Rivers Act	*free-flow, water quality, ORVs*

Incentive Programs

Local Incentives

Property taxes based on current use (e.g., agricultural, forestry, or recreational lands) rather than "highest and best use" value	*undeveloped character*
As-of-right cluster zoning	*undeveloped character*
Transfer of development rights	*undeveloped character*
Assessments that reduce taxable value for land that is unbuildable due to topography or conservation easements	*undeveloped character*

State Incentives

State-funded agricultural preservation restriction programs	*undeveloped character, scenery, riparian function*

Federal Incentives

Income tax deduction for charitable contributions, including donated value of conservation easements	*undeveloped character, riparian function, scenery, water quality*
"Safe Harbors" program under Endangered Species Act	*wildlife habitat, riparian function*
Sodbuster and Swampbuster programs	*water quality, wildlife habitat*

Voluntary Programs

Purchase of development rights or fee interest by municipality or organization	*undeveloped character, riparian function*
Voluntary best management practices:	
• maintenance of riparian buffer between lawns or cultivated fields and river	*riparian function, water quality, scenery*
• fencing livestock out of river	*water quality*
• low till or no-till cultivation	*water quality*
• reduction in the use of fertilizers, pesticides, and herbicides	*water quality*
• vegetation management that promotes native species, eradicates nuisance species	*wildlife habitat, scenery*

Analysis of Existing Resource Protection

The following factors should be considered in assessing how well existing controls protect river-related resources:

The extent of existing public conservation land ownership (local, state, federal)	*riparian function, undeveloped character, water quality*
The extent of existing private conservation land ownership (non-profits, institutions)	*riparian function, undeveloped character, water quality*
Existing conservation easements	*riparian function, undeveloped character, water quality*
Utility ownership	*riparian function, undeveloped character, water quality (depends on management)*
Flowage rights	*undeveloped character, riparian function, scenery*
Access limitations:	
• Areas that are "landlocked" due to natural features (gorges, canyons, wetlands, etc.)	*riparian function, undeveloped character, water quality, scenery*
• Areas that are landlocked due to human activities (railroads, highways, etc.)	*riparian function, undeveloped character (depends on what roads etc. look like)*
Slopes too steep for development	*riparian function, water quality, scenery*
Soils that are unsuitable for development	*water quality, riparian function*
Floodways/floodplains (where regulated)	*riparian function, scenery, water quality, undeveloped character*
Extent of existing development ("build-out" status)	(*depends on how existing development is affecting river*)

Wild & Scenic Rivers Act: Section 7

NATIONAL
WILD AND SCENIC
RIVERS SYSTEM

May 1997
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U.S. Forest Service
Portland, Oregon

Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council

Wild & Scenic Rivers Act: Section 7

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Wild & Scenic Rivers Act: Section 7

FOREWORD

Section 7 is one of the most important and powerful parts of the Wild and Scenic Rivers Act (Act). This key provision directs federal agencies to protect the free-flowing condition and other values of designated rivers and congressionally authorized study rivers. However, limited understanding by agency personnel, and growing public awareness of the protection afforded by Section 7, requires development of rigorous and consistent interagency evaluation procedures to protect river resources. This paper provides a basis for consistent interpretation of the standards and presents procedures to evaluate the effects of proposed water resources projects under Section 7.

INTRODUCTION

Congress passed the Act to preserve selected rivers from the dams and developments associated with many of the nation's waterways. While the Act provides a number of important measures to protect and enhance the values for which rivers are added to the National Wild and Scenic Rivers System (National System), none is more significant than the restrictions to water resources projects provided in Section 7. Through the language of this section, Congress expressed the clear intent to protect river values from the harmful effects of water resources projects.

More specifically, the Act prohibits the Federal Energy Regulatory Commission (FERC) from licensing the construction of hydroelectric facilities on rivers that have been designated as components of the National System, or which have been authorized by Congress for study as potential additions. Further, the Act prohibits other federal agencies from assisting in the construction of any water resources project that would have a direct and adverse effect on a designated river or congressionally authorized study river. The Act also includes a standard that governs water resources projects below or above a designated river or congressionally authorized study river. Determinations under Section 7(a) or 7(b) are made by the river-administering agency.

STATUTORY BACKGROUND

Section 7(a) states in part:

> *The Federal Power Commission [FERC] shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, as amended, on or directly affecting any river which is designated in section 3 of this Act as a component of the national wild and scenic rivers system or which is hereafter designated for inclusion in that system, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on the date of designation of a river as a component of the national wild and scenic rivers system.*

Section 7(b) of the Act provides the same protection to congressionally authorized, 5(a), study rivers except that the qualifying word "unreasonably" does not appear before "diminish." The effect is to provide greater protection for study rivers during the shorter term study process.

The first sentence of Section 7(a) and (b) applies a more stringent standard to projects licensed by the FERC than for other federally assisted projects proposed on a designated river or congressionally authorized study river (i.e., a prohibition to the FERC). Importantly, both standards in this sentence apply to projects proposed within the river corridor. The second sentence of Sections 7(a) and (b), which applies to the FERC and other federal agencies, defines a standard for projects proposed outside (i.e., below/above or on a tributary stream) the designated river or congressionally authorized study river. It specifically identifies scenic, recreational, and fish and wildlife as the four values to be evaluated.

DEFINITIONS

The Act does not define the terms expressed in Section 7; however, the U.S. Forest Service (USFS) has codified regulations for Section 7 at 36 CFR 297 which includes definitions. These definitions are based on Departments of Agriculture and Interior interpretations of Section 7 as developed in response to specific situations.

Construction: Any action carried on with federal assistance affecting the free-flowing characteristics or the scenic or natural values of a wild and scenic river (WSR) or congressionally authorized study river.

Federal Assistance: Any assistance by an authorizing agency before, during, or after construction. Such assistance may include, but is not limited to: a license, permit, preliminary permit, or other authorization granted by the FERC; a license, permit or other authorization granted by the Army Corps of Engineers, (ACOE), Department of the Army, pursuant to the Rivers and Harbors Act and Section 404 of the Clean Water Act. Assistance also includes federal funding of projects such as state highway proposals.

Free-flowing: Defined in the Act at Section 16(b) as "existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway."

Invade: Encroach or intrude upon.

River Corridor: Means a river and the adjacent area within the boundaries of a designated river, or a river and the adjacent area within one-quarter mile of the banks of a congressionally authorized study river (one-half mile for designated/study rivers authorized under the Alaska National Interest Lands Conservation Act).

River-administering Agency: One of the four federal agencies that may be charged with administration of a component of the National System. These agencies are the Bureau of Land Management (BLM), National Park Service (NPS), U.S. Fish and Wildlife Service (USFWS), and USFS.

Section 7 Standards: This paper offers an evaluation process to provide context for measuring a proposed project against the specific standard rather than a more precise definition.

Water Resources Projects: Any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act (FPA), or other construction of developments which would affect the free-flowing characteristics of a wild and scenic or congressionally authorized study river. In addition to projects licensed by the FERC, water resources projects may also include: dams; water diversion projects; fisheries habitat and watershed restoration/enhancement projects; bridges and other roadway construction/reconstruction projects; bank stabilization projects; channelization projects; levee construction; recreation facilities such as boat ramps and fishing piers; and, activities that require a 404 permit from the ACOE. Refer to Appendix A for a further discussion of how Section 7 may apply to particular types of projects.

STANDARDS AND EVALUATION PROCEDURES

The remainder of this text provides an interpretation of the standards in Section 7 and presents methods to evaluate the effects of proposed water resources projects for: 1) congressionally designated rivers; 2) secretarial-designated, 2(a)(ii), rivers; 3) congressionally authorized, 5(a), study rivers; and, 4) agency-identified, 5(d)(1), study rivers. It is presented in the form of a key, based on the type of project and location. Refer to Appendix B for Section 7 case studies.

I. Congressionally Designated Rivers: Section 7(a)

A. Water Resources Projects Within the River Corridor

1. Proposed Hydroelectric Facilities (Licensed by the FERC)

The FERC is prohibited from issuing a license (or exemption) for construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the FPA if the project is "on or directly affecting" a designated river.

The FERC routes applications for preliminary permits and licenses for proposed hydroelectric facilities to river-administering agencies for determinations of whether the project is "on or directly affecting" a designated river. The river-administering agencies apply the statute to prohibit any project work licensed under the FPA within the river corridor.

2. Existing Hydroelectric Facilities (Licensed by the FERC)

In the rare instances where an existing hydroelectric facility is included in a designated river corridor, modifying or relicensing of the facility is not prohibited by the Act. The river-administering agency should evaluate the proposed modification or relicense application to ensure that proposed operations protect or enhance river-related values under the "direct and adverse" effects standard. The baseline for evaluation of existing hydroelectric facilities is the project's configuration and operation at the time of the river's designation as subsequently modified through FERC processes. The baseline also includes the values as assessed at the date the river was added to the National System and the current resource conditions and trends. In certain situations, the change of operations (per modification or relicense) may be of positive benefit to river-related values. Opportunities identified in the river management plan (or other plans) may be used to recommend enhancements. However, such recommendations are not part of the Section 7 determination nor binding on the FERC. (Application of Section 7 does not, however, restrict an agency's authority to provide terms and conditions or other article requirements under the FPA.) Refer to Appendix C for the evaluation procedure.

3. Other Proposed Federally Assisted Water Resources Projects (Agency Other than the FERC)

Unlike proposed FERC-licensed projects, which are prohibited if they are "on or directly affecting" a WSR, other proposed federally assisted water resources projects are prohibited only if they would have a "direct and adverse effect" on the values for which a river was added to the National System. Examples of projects that would likely be subject to this standard include, but are not limited to: dams; water diversion projects; fisheries habitat and watershed restoration/ enhancement projects; bridge and other roadway construction/reconstruction projects; bank stabilization projects; channelization projects; levee construction; recreation facilities such as boat ramps and fishing piers; and, activities that require a Section 404 permit from the ACOE. Refer to Appendix C for the evaluation procedure.

B. Water Resources Projects Outside the River Corridor

1. Proposed or Modification/Relicense of Hydroelectric Facilities (Licensed by the FERC)

The FERC is subject to the river-administering Secretary's finding relating to developments (i.e., FERC-licensed projects) located below/above or on a stream tributary to the designated river. The downstream/upstream project may be constructed (proposed project) -- or reconfigured or operations modified (modification/relicense) -- as long as the designated river is not invaded by the project, or the scenic, recreational, and fish and wildlife values present at the date of designation are not unreasonably diminished. Opportunities identified in the river management plan (or other plans) may be used to recommend enhancements. However, such recommendations are not part of the Section 7 determination, nor binding on the FERC. (Application of Section 7 does not, however, restrict an agency's authority to provide terms and conditions or other article requirements under the FPA.) Refer to Appendix D for the evaluation procedure.

2. Other Proposed Federally Assisted Water Resources Projects (Agency Other than the FERC)

The river-administering agency evaluates non-hydroelectric project proposals under the "invade the area or unreasonably diminish" standard. Examples of projects that may be subject to this standard include, but are not limited to non-hydroelectric dams and other projects that affect the free-flowing characteristics of the designated river. Refer to Appendix D for the evaluation procedure.

II. Secretarial-Designated, 2(a)(ii), Rivers: Section 7(a)

Standards and evaluation procedures for the determination of effects of water resources projects are the same as discussed in the preceding section (I.A.1-3 and I.B.1-2). If there is an adjacent

federal land manager, that agency is responsible for conducting the Section 7(a) determination. On rivers without adjacent federal ownership, the NPS is responsible for the Section 7(a) determination.

III. Congressionally Authorized, 5(a), Study Rivers: Section 7(b)

A. Water Resources Projects Within the Congressionally Authorized Study River

1. Proposed Hydroelectric Facilities (Licensed by the FERC)

Section 7(b) of the Act prohibits the FERC from issuing a license or exemption for a hydropower project if the proposed project is on or directly affecting a study river designated under Section 5(a) of the Act. This moratorium is in effect during the study and for three years after the President sends the report and his recommendations to Congress. If Congress designates the river during this three year period, the protection becomes permanent. The study agency is responsible for the determination as to whether a proposed project is on or directly affecting the study river. Refer to the section "proposed hydroelectric facilities" under water resources projects within the designated river corridor (Section I.A.1.).

2. Existing Hydroelectric Facilities (Licensed by the FERC)

Refer to the section on "existing hydroelectric facilities" under water resources projects within the designated river corridor (Section I.A.2.).

3. Other Proposed Federally Assisted Water Resources Projects (Agency Other than the FERC)

Refer to the section on "other proposed federally assisted water resources projects" under water resources projects within the designated river corridor (Section I.A.3.).

B. Water Resources Projects Outside the Congressionally Authorized Study River

For 1 and 2 below, i.e., water resources projects outside the congressionally authorized study river, the downstream/upstream project will be evaluated as to whether the study river is invaded or the scenic, recreational, and fish and wildlife values present on the date of designation of the river for study are diminished.

1. Proposed or Modification/Relicense of Hydroelectric Facilities (Licensed by the FERC)

Refer to the section on "proposed or modification/relicense of hydroelectric facilities" under water resources projects outside the designated river corridor (Section I.B.1.). Refer to Appendix E for the evaluation procedure.

2. Other Proposed Federally Assisted Water Resources Projects (Agency Other than the FERC)

Refer to the section on "other federally assisted water resources projects" under water resources projects outside the designated river corridor (Section I.B.2.). Refer to Appendix E for the evaluation procedure.

IV. Agency-Identified, 5(d)(1), Study Rivers: Section 7

Rivers found eligible or suitable for the National System through agency planning processes are not protected by the Act from proposed hydroelectric facilities or other federally assisted water resources projects that have the potential to affect the river's free-flowing characteristics and other identified values. However, the managing agency should, within its authorities, protect the values which make the river eligible or suitable. If a river is listed in the Nationwide Rivers Inventory (NRI), the federal agency involved with the action must consult with the land managing agency, or the NPS, if the river is on private lands, in an attempt to avoid or mitigate adverse effects. This consultation is required pursuant to a 1980 directive from the Council on Environmental Quality.

SECTION 7, NATIONAL ENVIRONMENTAL POLICY ACT (NEPA), AND COORDINATION WITH PROPONENT/REGULATING AGENCY

A separate environmental document is not required for a Section 7 determination. Rather, the federal official proposing or permitting the project typically includes analysis of what, if any, impact the proposal would have on a designated or potential WSR in their respective environmental and/or permitting processes. The river-administering agency is responsible for conducting the Section 7 analysis and making a determination under the statute. This responsibility does not preclude utilizing staff expertise of the proposing/permitting agency in the evaluation process. The Section 7 determination is signed and transmitted to the proposing/permitting agency via respective river-administering agency processes.

1. Hydropower Proposals (Licensed by the FERC)

For hydropower proposals, a preliminary Section 7 determination should be completed at the final application stage. This approach is based on the assumption that sufficient detail of the project proposal is not available until the final application. This preliminary determination will precede the environmental assessment (EA) or environmental impact statement (EIS) conducted prior to the licensing decision. Completing the preliminary determination with the final application provides the river-administering agency an opportunity to recommend measures to reduce adverse effects to within acceptable levels, if the proposal is found inconsistent with the appropriate Section 7 standard.

During the environmental analysis process, the FERC will develop alternatives and may assess the project under different configurations than proposed in the license application. Importantly, the river-administering agency will reserve the right to reevaluate a Section 7 determination completed for the final application in the event the alternatives considered in the environmental analysis modify the project, or otherwise create impacts not previously addressed. The river-administering agency will evaluate and make its Section 7 determination responsive to the FERC's draft and final environmental documents.

Note: The FERC is considering new procedures that would allow the NEPA process to take place earlier in the licensing process and formalizing cooperating agency status under NEPA. The river-administering agency would complete the preliminary Section 7 determination coincident with the environmental document (including the draft) or final application, whichever is issued first.

2. Other Federally Assisted Water Resources Projects (Agency Other than the FERC)

For proposed water resources projects "assisted" by other federal agencies, the Section 7 determination would be conducted responsive to draft and final environmental documents, respectively (i.e., when sufficient alternative detail and discussion of environmental consequences is available in a NEPA document). The river-administering agency should identify WSR concerns early in the scoping process and should cooperate with the proposing agency to the greatest extent possible.

Section 7 creates a requirement for consultation between the river-administering agency and the federal agency assisting the construction of the project. Project proponents, if not federal agencies, are not required to consult directly with the federal river-administering agency, and no new permits are required under Section 7. However, project proponents should be encouraged to consult informally with the river-administering agency early in the siting and project design process, in order to avoid delays and costs associated with projects that cannot be approved under Section 7.

The river-administering agency should, as appropriate, coordinate its evaluation process with other agencies that are required to review and comment on the project. Depending on the type of proposed project, this may include: USFWS (Fish and Wildlife Coordination Act, Endangered Species Act, and other statutes); National Marine Fisheries Service (Endangered Species Act); Environmental Protection Agency (Clean Water Act, Clean Air Act); and state fish, wildlife, water quality, and other agencies. Coordination with these other agencies should begin as early as possible in the process, preferably in the first stages of project planning.

For a water resources project proposed by a river-administering agency, the Section 7 determination should be documented in, or appended to, the environmental analysis. Similarly, for 5(d)(1) study rivers, an analysis of the potential effects of a proposed water resources project on free-flow, water quality, and the outstandingly remarkable values (ORVs) should be incorporated, appended, or available in the analysis file.

SECTION 7 AND THE FERC LICENSING PROCESS

A key step to facilitate Section 7 determinations for hydropower proposals is the early identification in the consultation process of precisely what information the proponent must collect or analyze to address issues necessary for the determination. This information appears in Exhibit E of the proponent's application for license or relicense and serves as the basis of the determination. Careful identification of information and analysis needs, at appropriate steps in the consultation process, will greatly simplify the work associated with completing a Section 7 determination responsive to the final application and draft/final environmental analysis documents.

It is also important to note that the Section 7 determination does not provide the river-administering agency an avenue to require mitigation and enhancement needs (relative to the licensing process). If a determination is made that a project would result in a direct and adverse effect, or, for projects below/above the designated river, to invade the area or unreasonably diminish (or diminish for a study river) the scenic, recreational, and fish and wildlife values present at the date of designation, the responsible official may recommend measures to eliminate adverse effects.

SECTION 7 AND THE ACOE PERMITTING PROCESS

The ACOE's regulations are found at 33 CFR 320-330. Section 404 of the Clean Water Act requires the ACOE to regulate, through permits, the discharge of dredged or fill material into waters of the United States, including wetlands. Section 10 of the Rivers and Harbors Act of

1899 requires the ACOE to regulate, through permits, structures and work in navigable waters of the United States. The scope of the ACOE jurisdiction pursuant to these regulatory authorities is defined at 33 CFR 328-329. ACOE permit applications for activities in WSRs subject to the provisions of Section 7 of the Act.

Federal assistance, as defined by the river-administering agencies, includes ACOE permits. A permit from the ACOE will require a Section 7 determination by the river-administering agency when the proposal occurs in a designated river or congressionally authorized study river and is a water resources project, i.e., affects the river's free-flowing condition. The ACOE process requires a written determination from the river-administering agency for such projects. It is very important for WSR administrators to develop a close working relationship with Regional and District ACOE staff to participate in the review and evaluation process.

Appendix A: Section 7 Examples

The following examples represent typical project proposals that may affect WSRs. For some of these examples, whether or not and/or how to apply Section 7 is apparent, for others it may not be as obvious. The answers are based on recommendations by river management experts; however, for these, or more complex situations such as mining activities, threatened and endangered species, and hydroelectric development projects, consultation with agency experts and/or legal counsel may be appropriate.

River-administering agency proposes to place fish habitat improvement structures in a WSR to meet habitat restoration goals.

Section 7 should be applied if the proposed project has the potential to affect the free-flowing condition of the river. Consideration of such structures should be based on the need for fish habitat restoration as identified in the River Management Plan (RMP). For example, the RMP may identify a need to recruit large woody debris in a stream where there is a limited natural source.

A federal agency proposes to construct a dam on an upstream tributary of a WSR. The tributary is not a part of the designated river.

Section 7 should be applied if the proposed project has the potential to affect the free-flowing condition of the designated river. The appropriate standard under Section 7(a) is whether the project would invade the designated river or unreasonably diminish the scenic, recreational, fish and wildlife values present at the date of designation. Because the project is upstream of the designated river, the project will not invade it. The river manager should consider, and document, how the project might affect the four values specified for a project outside the river corridor: scenic, recreational, and fish and wildlife.

River-administering agency proposes to construct a new boat launch facility within a WSR.

Boat launch facilities of traditional designs typically have the potential to affect the free-flowing condition of a river and should be evaluated under Section 7. Such projects should be supported by direction in the RMP.

River-administering agency proposes a vegetative manipulation on public lands in a WSR.

Typically, a vegetative manipulation project within a river corridor does not have the potential to affect the free-flowing condition of the river and is not considered a water resources project.

Importantly, however, the effects of the project should be evaluated to assure that the values for which the river was included in the National System are protected.

An existing hydroelectric facility is being relicensed upstream of a WSR. The licensee proposes changes in project configuration and operation.

Section 7 applies specifically to hydroelectric projects licensed by the FERC. For projects, outside the river corridor, the river-administering agency would evaluate the effects of the proposal on scenic, recreational, and fish and wildlife values present in the designated river at the date of designation. The standard of evaluation is whether the proposal would "unreasonably diminish" these stated values.

River administering agency proposes to replace a culvert on a road that crosses a river found eligible for wild and scenic river designation though the agency's planning process (Section 5(d)(1)).

An agency identified study river is not protected under the Act. Generally, agency policy requires some type of analysis to determine the effects of the project on free-flow and the ORVs. The resulting design, if implemented, would protect the potential river's values as a WSR.

A small community proposes to withdraw water from a WSR for domestic purposes.

Section 7 would be applied if the project has a structure associated with it that has the potential to affect the free-flowing condition of the river.

A landowner proposes to block a major tributary of a WSR for irrigation purposes. The project is located above the designated river.

It would be appropriate to apply Section 7 if there was federal assistance involved and the construction had the potential to affect the free-flow of the designated river. Such assistance may include the need to acquire a license, permit or other authorization by a department or agency of the federal government before, during, or after construction of the project. It also includes technical assistance from a federal agency and/or federal funding.

A bridge crossing a WSR washes out and the proposal by the river-administering agency is to replace it similar to its original condition.

An analysis of the bridge replacement should be conducted relative to Section 7. In the analysis process, opportunities for improved design or a better location for the bridge may lessen its impacts on river resources and allow better connection of the river with its floodplain. This

would be true if the bridge replacement was proposed by another federal agency or state/county utilizing federal assistance (federal funding, ACOE Section 404 permit, etc.).

Private landowners with homes on the bank of a WSR propose to replace a section of existing riprap that is failing and to construct a new section of riprap on a portion of land that is not presently armored.

A proposal to place riprap on private lands typically requires federal assistance in the form of a Section 404 permit by the ACOE. The RMP should address this issue and provide guidance. For example, the RMP might provide guidance that it is permissible to replace existing riprap but, in such replacement, consideration is to be given to improving the existing situation and/or using methods that mimic natural processes. The river-administering agency might offer assistance in the design of the project under authorities given in Section 11(b)(1). New riprap is not typically permitted on a designated river, but careful consideration must be given to the existing development and the river's flow regime.

Appendix B: Section 7 Case Studies

Salmon River Side-Channel Restoration, Oregon

Background: The BLM, through the WSR planning process, identified an important side-channel of the Salmon River for stream habitat restoration. The side-channel had been closed 25 years previously by flood control channelization work conducted by the ACOE. During following years, a dike was constructed along the river in order to protect a recreation site and facilities from flooding. Dike construction blocked all flow of Salmon River water to the secondary channel. Restoring flow to the side-channel would provide critical off-channel spawning and rearing habitat for anadromous fish. The anadromous fishery of the river was found to be one of the river's ORVs.

Application of Section 7: An interdisciplinary BLM team used the accompanying Section 7 process in preparing an environmental analysis of the proposed project. The Section 7 review analyzed the effects of reopening the secondary channel by breaching the old dike, constructing a diversion structure and diverting flow from the mainstem of the Salmon River into the secondary channel for about one-third of a mile before returning to the mainstem. The step-wise Section 7 analysis resulted in a careful multi-disciplinary review and design process. The final project satisfied the intent of the Act while meeting stream habitat restoration and flood control goals. Construction of a small headgate was required to maintain the flood control integrity of the dike while allowing control of flows that would mimic natural variations occurring on the mainstem. A section 404 permit (of the Federal Water Pollution Control Act administered by the ACOE) was required for construction. The Section 7 analysis satisfied the ACOE, Oregon Department of Fish and Wildlife, and Oregon Department of Water Resources review processes, and the project was approved.

Results: An average of about five to fifteen cubic feet per second (cfs) of water now flows from the mainstem of the river through the side channel and adjacent pools, returning to the mainstem just one-third mile downstream. The Section 7 analysis provided an alternative that minimized disturbance of the bed and bank at the head of the old channel and reduced sedimentation in the side channel. A surface flow diversion structure with headgate was constructed and screened with natural or natural-appearing materials. Regulation of flow was necessary in order to mimic natural flows, maintain flood protection for the recreation site, and ensure that there will be no adverse impacts to the mainstem habitat during extreme low flow conditions. Even at lowest recorded flow conditions (approximately 70 cfs at this location), side channel flows would not exceed 10% of the main channel flows, resulting in negligible effect to the mainstem habitat. The project was successful in restoring approximately 2,700 square meters of prime spawning and rearing (particularly over-wintering) habitat for coho salmon, winter steelhead, and cutthroat trout. First year inventories of coho salmon and winter steelhead populations showed that production vastly exceeded expectations. The channel has been highly acclaimed for its habitat restoration, environmental education, research and aesthetic values.

Lower St. Croix River Marina, Minnesota/Wisconsin

Background: Most of the St. Croix Wild and Scenic River in Minnesota and Wisconsin is administered by the NPS, but the lower 25 miles were designated by the Secretary of the Interior and this segment is administered by the States. The Minnesota and Wisconsin Departments of Natural Resources have entered into an agreement with the NPS to form a Lower St. Croix Management Commission (Management Commission) so that these three form a management triumvirate.

In 1980, the Control Data Employees Recreational Foundation (Control Data) made application to the ACOE for a permit to construct a marina for its employees in the state-administered segment on the Minnesota side of the river. There already was concern that the Lower St. Croix was being overused for recreational boating, and that the proposed facility would worsen the situation. The state of Minnesota supported construction, but Wisconsin and the NPS opposed it. The Secretary of the Interior wrote to the ACOE requesting that the ACOE withhold a decision pending completion of a river use pattern study being performed under contract for the NPS. The purpose of the study was to determine the appropriate level of river use and development.

Application of Section 7: The project would involve dredge and fill in the bed and on the banks of a navigable waterway included in the National System. It clearly was a water resource development project requiring a Section 10 (of the Rivers and Harbors Act of 1899) permit and a Section 404 (of the Federal Water Pollution Control Act) permit from the ACOE. The NPS felt that it was responsible for reviewing the proposal for possible "direct and adverse effects" under Section 7(a). Control Data claimed the Secretary of the Interior (NPS) did not have this authority for a state-administered river and brought suit. The U.S. District Court for the District of Columbia ruled that the Secretary did have this authority.

Results: A key finding of the study aside from confirming crowded conditions during peak use which caused safety concerns, was that institutional, industrial and commercial users (which would include Control Data) did not contribute significantly to the volume of traffic (less than 2%) during peak use periods. Therefore, the Secretary lifted his moratorium, and the ACOE issued the permit, but for a smaller marina than had been proposed. The Secretary also ordered that a new policy for future boating facilities be developed with several provisos established. These include: no more large marinas because they contributed significantly to peak use, with the Management Commission to define the distinction between "large" and "small" for Lower St. Croix purposes; establishment of thresholds of safety; and the issuing of permits to individual riparian owners since they also did not contribute significantly to congestion of the water surface or in beach areas.

North Umpqua River Highway Project, Oregon

Background: The Oregon Department of Transportation (ODOT), funded by the federal Public Lands Highway Program, proposed to reconstruct Highway 138, including a segment that parallels part of the North Umpqua Wild and Scenic River. The intent of the proposal was to correct existing pavement and safety deficiencies along the route and to enhance access to the multiple resource activities on adjacent federal lands (managed by the BLM, NPS and USFS). The North Umpqua was added to the National System in recognition of its fishery; water quality and quantity; and recreational, scenic and cultural values. The lower portion of the designated river is administered by the BLM and the upper portion (where a 13.5-mile segment of highway reconstruction was proposed) administered by the USFS.

Application of Section 7: Staff of the Umpqua National Forest utilized the management direction in the recently completed North Umpqua Wild and Scenic River Management Plan to provide input into the state's planning process and as a basis for the resulting Section 7 determination. In addition to identification of the desired future condition for the outstandingly remarkable and other important river values, the North Umpqua Wild and Scenic River Management Plan included guidance for the North Umpqua Highway which is a part of the National Scenic Byway System. Components of the proposed highway project that were evaluated as water resources projects under the "direct and adverse effects" standard included redesign of an access site, widening of a bridge spanning the river, and proposed gabion walls to accommodate roadway width and guardrail.

Results: Early consultation with the ODOT, and the application of the Section 7 procedure by a USFS interdisciplinary team, resulted in significant redesign of the project to protect the river's connection with its floodplain and ORVs. Specifically, the access site redesign eliminated encroachment on bank full channel and lower river terraces in the two- to five-year floodplain. The bridge was widened without modifications or additions to the existing footing and columns (protecting an important anadromous spawning area at the site and immediately downstream), and the gabion wall proposal was eliminated and the site redesigned without additional excavation or embankment construction.

Little Miami River Dock and Concrete Pad Project, Ohio

Background: The Little Miami River was designated in stages (1973 and 1980) by the Secretary of Interior at the request of the Governor of Ohio (via Section 2(a)(ii) of the Act). In December 1986, the NPS received a Public Notice from the ACOE announcing that a landowner was requesting "after-the-fact" Sections 10 (of the Rivers and Harbor Act) and 404 (of the Federal Water Pollution Control Act) permits for construction of a boat landing and scenic

overlook on a designated segment of the river. The river possessed outstanding scenic, recreational, fish and wildlife, geologic and historic values.

Application of Section 7: On state-administered national WSRs, without adjacent federal ownership, the Secretary of the Interior, through the NPS, is responsible for making Section 7 determinations. (Consultation with the state-administering agencies occurs as needed.) The NPS Midwest Region evaluated this water resources project for "direct and adverse" effects on WSR values.

Results: After consultation with the Ohio Department of Natural Resources, the NPS determined that the project did have a "direct and adverse effect" on the values for which the Little Miami had been designated. Essentially, the owner's entire riverbank had been converted from a natural condition by covering it with concrete. A letter was sent to the ACOE requesting that the permit not be issued and that the owner be ordered to remove the construction and restore the riverbank. The ACOE denied the permit and ordered that the compliance measures requested by the NPS be implemented. The landowner refused and in due time the ACOE had the U.S. Justice Department bring suit against the landowner to comply. Eventually, a Consent Order and Judgment was handed down in which the landowner agreed to comply with the terms of the ACOE requirement.

North Fork John Day Dredge Pile Restoration, Oregon

Background: Past dredge mining has severely altered the free-flowing characteristics of the North Fork John Day (North Fork) Wild and Scenic River. The dredge tailings, located over an approximate 11-mile portion of the designated river, have acted to direct the flow of the river against the streambanks, causing streambank erosion and aggravating a serious bank stability problem. Past dredging also excavated streambed material down to bedrock, completely rearranging the distribution of the natural sediments of the stream. Little recovery has occurred in the 50 years since the site was dredged because of the large amount of tailings and non-erosive characteristics of the dredge piles.

The North Fork is one of the few remaining rivers in the Columbia River Basin that supports wild runs of anadromous chinook salmon and steelhead. The river also supports populations of bull trout. The purpose of the restoration project is to improve salmonid rearing habitat, water quality, streambank stability, and floodplain function. The project was based on proven restoration techniques and phased in, beginning with a pilot effort in 1993 that focused on alternative placement of tailings material. Phase 2 expanded the treatment area and extended the time frame to a five-year period.

Application of Section 7: Umatilla National Forest staff applied the accompanying Section 7 process to evaluate the potential for "direct and adverse" effects. The project proposal was coordinated with the Oregon Division of State Lands and the ACOE regarding state/federal permits for fill and removal. In addition, USFS staff consulted with the Oregon Department of Fish and Wildlife, Oregon Parks and Recreation Department (the river is also a State Scenic Waterway), and affected county and tribal governments; the USFS conducted an extensive public outreach as part of the environmental analysis process. The project was designed to remove the artificial impediment to the river's free-flowing characteristics with as little effect to streambank and riparian vegetation as possible, thereby, allowing the river to reconnect with its floodplain over time.

Results: The results of extensive (and ongoing) monitoring of the first phase of the project indicate that floodplain function has been restored. The river has access to its floodplain and is emulating the natural system as typified in the upstream wilderness segment. The channel morphology is evidencing little change except for widening of the river adjacent to where tailings had been piled. Photo point monitoring shows that most of the pre-project vegetation is still on the site and also that vegetative recovery is occurring on the newly established floodplain. Importantly, the restoration was planned and implemented in a manner to allow the river to reconnect with its floodplain by removing the dredge tailings rather than engineering a solution.

Maurice River Boat Dock and Onshore Mining Development, New Jersey

Background: During the study phase for the Maurice Wild and Scenic River in New Jersey, the Genstar Stone Products Company applied to the ACOE for a permit to build a dock and berthing facility on a section of the river under study. This facility was to service barges for a proposed sand and gravel operation landward of the dock. Construction of the dock and berthing space would require removal of 12,000 cubic yards of sand from the river bottom and banks and construction of 400 feet of bulkhead. In order to move the extracted material from the mine site to the barges, a conveyer system was to be built which would be 60 feet above water level. A 40-foot-high section would extend 85 feet over the river. Ancillary facilities would include roads, a sand processing plant, truck scales, offices, parking and refueling areas. Up to four barge loads would have been moved per day.

Application of Section 7: Because the proposal involved dredge and fill in the river, it was clearly a water resources project and because it would occur in a navigable waterway, an ACOE Section 10 permit was required. The NPS, as the study agency for this river, reviewed the application pursuant to Section 7(b) of the Act.

Results: The effects of the project on the river's free-flowing condition was considered. Some of the ORVs identified by the study were several rare or imperiled plants (specifically the

sensitive joint vetch, Parker's pipewort, the sedge *Carex barrattii*, and the boneset *Eupatorium reinosum*); essential bald eagle habitat; and the occurrence of other rare and imperiled birds such as Cooper's hawk, northern harrier and osprey. It was determined that construction activities would occur in some of the same locale as that of the rare and imperiled plants, and that noise from the mining activities and barge traffic would adversely affect the raptor population along the river. There would also be adverse effects on scenic values in the vicinity of the plant, though these values were not judged to be outstandingly remarkable.

Based on this impact assessment, the NPS, through the USFWS, recommended to the ACOE that the permit be denied on the basis of "direct and adverse effects." The New Jersey Department of Environmental Protection found the proposal to be inconsistent with the New Jersey Coastal Zone Management Program. On the basis of these determinations, the ACOE denied the permit.

Sudbury River Aqueduct, Massachusetts

Background: Boston's regional water supply utility, the Massachusetts Water Resources Authority (MWRA), is in the process of constructing a major new aqueduct in the form of a bedrock tunnel that will cross under the Sudbury River in Framingham, Massachusetts. A major tunnel access shaft, "Shaft L," will be excavated a few hundred feet from the river. During the construction period, pumps at Shaft L will remove the large volume of groundwater that will seep into the tunnel, and the MWRA proposes to discharge this water, after treatment, to the Sudbury River. The water treatment facility will remove oil and grease, suspended solids, etc., from the water, which should be fairly high in water quality. A riprap stilling basin will be constructed on the banks of the river to reduce the velocity of the discharge, which will have a maximum rate of 3200 gallons per minute (or 7.15 cfs). This is the equivalent of almost one-third of the river's natural flow during extreme low flow periods (ten-year drought).

In addition to its free-flowing character, the resources of interest along this portion of the Sudbury include aquatic wildlife habitat (Great Meadows National Wildlife Refuge is one-quarter mile downstream), scenery, recreation, archaeology, and literary (cultural) values (the adjacent oxbow was one of H.D. Thoreau's favorite haunts and features of his writings).

Application of Section 7: The segment of the Sudbury River that will be affected by the discharge is currently a congressionally authorized, 5(a), study river and thus is subject to the protections afforded by Section 7(b) of the Act. Based on favorable eligibility and suitability findings, along with eight Town Meeting votes in favor of designation, the Study Committee and NPS are recommending that the river be added to the National System, and legislation to designate the river will be filed soon.

The MWRA is seeking two permits under the federal Clean Water Act: a National Pollutant Discharge Elimination System (NPDES) permit from the Environmental Protection Agency, and a Section 404 permit from the ACOE. The NPS, in partnership with the Wild and Scenic River Study Committee, has been involved in close consultation with both permitting agencies.

Results: As a result of this process, the following provisions have been added to the NPDES and Section 404 permits to ensure that the project will have no direct and adverse effect on the river's values:

- The MWRA will not be permitted to retain the discharge structure permanently, as originally requested, because of unacceptable direct and adverse impacts on the river's free-flowing character and scenic values.

- The proposed stilling basin has been moved from a sensitive archaeologic site to a previously disturbed area of riverbank. Riparian wetlands at this site will be restored when the basin is removed, enhancing both scenery and riparian habitat.

- Discharge velocities have been reduced and decentralized to avoid scouring, thereby protecting water quality and aquatic biota. In addition, the MWRA will be required to monitor temperature, turbidity, and total suspended solids continuously up and downstream of the discharge point, and to undertake a study of the discharge's effects on benthic macroinvertebrates.

- A 70-foot high "mountain" of unvegetated crushed rock that was originally proposed to be created at the site, within view of the river, has been eliminated. Instead, rock removed from the tunnel will be processed as gravel and sold off-site. (While this portion of the project was not subject to Section 7 since it did not require any federal permits or funding, the MWRA chose to mitigate the rock pile's impacts voluntarily.)

Appendix C: Evaluation Procedure Under "Direct and Adverse"

Evaluation procedure under the direct and adverse effects standard for existing projects licensed by the FERC, or other federally assisted projects inside the designated river (Section 7(a)), or congressionally authorized study river (Section 7(b)).

The following questions should be considered in a typical analysis under this standard. The scope of the evaluation should be consistent with the magnitude and complexity of the proposed activity. The resulting analysis may be documented in a few pages or a much lengthier product, as required.

1. **Define the Proposed Activity.** Describe the proposed activity in terms of the:
    a. Project proponent(s);
    b. Purpose/need for the project;
    c. Geographic location of the project (include a map);
    d. Duration of the proposed activities;
    e. Magnitude/extent of the proposed activities; and,
    f. Relationship to past and future management activities.

2. **Describe How the Proposed Activity Will Directly Alter Within-Channel Conditions.** Address the magnitude and spatial extent of the effects the proposed activity will have on within-channel attributes. Give special attention to changes in features that would affect the ORVs. Describe:
    a. The position of the proposed activity relative to the streambed and streambanks.
    b. Any likely resulting changes in:
        (1) Active channel location;
        (2) Channel geometry (cross-sectional shape, width/depth characteristics);
        (3) Channel slope (rate or nature of vertical drop);
        (4) Channel form (straight, meandering, or braided);
        (5) Relevant water quality parameters (turbidity, temperature, nutrient availability); and,
        (6) Navigation of the river.

3. **Describe How the Proposed Activity Will Directly Alter Riparian and/or Floodplain Conditions.** Address the magnitude and spatial extent of the effects the proposed activity will have on riparian/floodplain attributes. Give special attention to changes in features that would affect the ORVs. Describe:

a. The position of the proposed activity relative to the riparian area and floodplain.
b. Any likely resulting changes in:
    (1) Vegetation composition, age structure, quantity, or vigor;
    (2) Relevant soil properties such as compaction or percent bare ground; and,
    (3) Relevant floodplain properties such as width, roughness, bank stability, or susceptibility to erosion.

4. **Describe How the Proposed Activity Will Directly Alter Upland Conditions.** Address the magnitude and spatial extent of the effects the proposed activity will have on upland attributes. Give special attention to changes in features that would affect the ORVs. Describe:
    a. The position of the proposed activity relative to the uplands.
    b. Any likely resulting changes in:
        (1) Vegetation composition, age structure, quantity, or vigor;
        (2) Relevant soil properties such as compaction or percent bare ground; and,
        (3) Relevant hydrologic properties such as drainage patterns or the character of surface and subsurface flows.
    c. Potential changes in upland conditions that would influence archaeological, cultural, or other identified significant resource values.

5. **Evaluate and Describe How Changes in On-Site Conditions Can/Will Alter Existing Hydrologic or Biologic Processes.** Evaluate potential changes in hydrologic and biologic processes by quantifying, qualifying, and/or modeling the likely effects of the proposed activity on:
    a. The ability of the channel to change course, re-occupy former segments, or inundate its floodplain.
    b. Streambank erosion potential, sediment routing and deposition, or debris loading.
    c. The amount or timing of flow in the channel.
    d. Existing flow patterns.
    e. Surface and subsurface flow characteristics.
    f. Flood storage (detention storage).
    g. Aggradation/degradation of the channel.
    h. Biological processes such as:
        (1) Reproduction, vigor, growth and/or succession of streamside vegetation;
        (2) Nutrient cycling;
        (3) Fish spawning and/or rearing success;
        (4) Riparian dependent avian species needs;
        (5) Amphibian/mollusk needs; and,
        (6) Species composition (diversity).

6. **Estimate the Magnitude and Spatial Extent of Potential Off-Site Changes.** Address potential off-site, or indirect effects of the proposed activity, acknowledging any uncertainties.
   a. Consider and document:
      (1) Changes that influence other parts of the river system;
      (2) The range of circumstances under which off-site changes might occur (for example, as may be related to flow frequency); and,
      (3) The likelihood that predicted changes will be realized.
   b. Specify processes involved, such as water and sediment, and the movement of nutrients.

7. **Define the Time Scale Over Which Steps 3-6 are Likely to Occur.** Review steps 3-6, looking independently at the element of time. Define and document the time scale over which the effects will occur.

8. **Compare Project Analyses to Management Goals.** Based on the analysis of steps 3-7, identify and document project effects on achievement, or timing of achievement, of management goals and objectives relative to free-flow, water quality, riparian area and floodplain conditions, and the ORVs and river classification.

9. **Make the Section 7 Determination.** Based on the analysis of steps 3-8, document:
   a. The effects of the proposed activity on conditions of free-flow, including identification of any proposed measures to minimize those effects.
   b. Any direct and adverse effects on the ORVs for which the river was designated.

Appendix D: Evaluation Procedure Under "Invade the Area or Unreasonably Diminish"

Evaluation procedure under the invade or unreasonably diminish standard for projects licensed by the FERC, or other federally assisted projects outside the designated river corridor (Section 7(a)).

The evaluation procedure for this standard does not lend itself to a common series of questions as developed for the direct and adverse effects standard (Appendix C). Rather, the evaluation should be focused on describing the potential of the proposed project to either invade the designated river, or diminish the scenic, recreational, and fish and wildlife values. The following text provides an outline for documenting the determination and, importantly, identifies the questions to consider in evaluating the magnitude of the effects.

Suggested Outline for Determination

Introduction: Briefly describe the project and attributes of the designated river (clearly identify the ORVs).

Section 7(a) Requirement: Describe the standard. Include the following text.

> *Section 7(a) of the Act provides a specific standard for review of developments below or above or on a stream tributary to a designated river. Such developments may occur as long as the project "will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area as of the date of designation . . ." This standard applies to projects outside the river corridor but on the same river or a tributary.*
>
> (Relate the project location to the designated river.)
>
> *The initial question to be addressed is whether or not the proposed project invades the designated river. The term invade is defined as encroachment or intrusion upon. If the project is determined to invade the designated river, the proponent would be advised to develop measures to eliminate this unacceptable effect.*
>
> *If the proposed project does not invade the designated river, the next question to be answered, relative to the standard in Section 7(a), is whether or not the proposed project will "unreasonably diminish" any of the specified values. Given that the standard implies that some diminution of values may be determined reasonable, there are two questions to consider:*

1. *Does the proposed project cause diminution of the scenic, recreational, and fish and wildlife values of the designated river as present at the date of designation?*

2. *If there is diminution, is it unreasonable? This would suggest an evaluation of the magnitude of the loss. Factors to be considered include:*
   (1) *Whether the value contributed to the designation of the river (i.e., outstandingly remarkable); and,*
   (2) *The current condition and trends of the resource. (If diminution is determined unreasonable, measures may be recommended to reduce adverse effects to within acceptable levels.)*

Rationale for Determination: Identify the document that provides the basis for the evaluation. For hydroelectric proposals, the application, including Exhibit E, is the basis for the preliminary Section 7 determination, reserving the right for further evaluation based on the results of subsequent environmental analysis. For a non-hydroelectric project, this document is the proposing agency or river-administering agency's environmental document. Also include, if appropriate, that staff specialists utilized available additional data as described in an accompanying Section 7(a) report.

Determination: Describe the findings as to whether the proposed project will invade the area or unreasonably diminish the four identified values: scenic, recreational, fish, wildlife. If the finding is that the proposal will invade the area or unreasonably diminish any of the four specified values, identify recommendations to reduce adverse effects to within acceptable levels, as possible.

Signature: Of the responsible official.

Section 7(a) Report: Include, as appropriate, a report that provides the detailed discussion of the potential effects that lead to the conclusions summarized in the determination.

Note: The completed Section 7 determination (determination and, if appropriate, an accompanying report) should then be included in, or appended to, the project's environmental document. Refer to preceding discussion "Section 7, NEPA, and Coordination with Proponent/ Regulating Agency."

Appendix E: Evaluation Procedure Under "Invade the Area or Diminish"

Evaluation procedure under the invade or diminish standard for projects licensed by the FERC, or other federally assisted projects outside the congressionally authorized, 5(a), study river corridor (Section 7(b)).

The evaluation procedure for this standard does not lend itself to a common series of questions as developed for the direct and adverse effects standard (Appendix C). Rather, the evaluation should be focused on describing the potential of the proposed project to either invade the designated river or diminish the scenic, recreational, and fish and wildlife values. The following text provides an outline for documenting the determination and, importantly, identifies the questions to consider in making the determination.

Suggested Outline for Determination

Introduction: Briefly describe the project and attributes of the designated river (clearly identify the ORVs).

Section 7(b) Requirement: Describe the standard. Include the following text.

> *Section 7(b) of the Act provides a specific standard for review of developments below or above or on a stream tributary to a designated river. Such developments may occur as long as the project "will not invade the area or diminish the scenic, recreational, and fish and wildlife values present in the area as of the date of designation . . ." This standard applies to projects outside the river corridor but on the same river or a tributary.*
>
> (Relate the project location to the designated river.)
>
> *The initial question to be addressed is whether or not the proposed project invades the congressionally authorized study river. The term invade is defined as encroachment or intrusion upon. If the project is determined to invade the designated river, the proponent would be advised to develop measures to eliminate this unacceptable effect.*
>
> *If the proposed project does not invade the designated river, the next question to be answered, relative to the standard in Section 7(b), is whether or not the proposed project will "diminish" any of the specified values. Specifically, does the proposed project cause diminution of the scenic, recreational, and fish and wildlife values of the study river (as present at the date of designation of the river*

for study)? A project with long-term, positive benefits which greatly outweigh very short term diminishment of stated values may be determined acceptable. However, the river's eligibility; i.e., its identified ORVs, free-flow and water quality, as well as its inventoried (tentative) classification, must be maintained in the short- and long-term.

Rationale for Determination: Identify the document that provides the basis for the evaluation. For hydroelectric proposals, the application, including Exhibit E, is the basis for the preliminary Section 7 determination, reserving the right for further evaluation based on the results of subsequent environmental analysis. For a non-hydroelectric project, this document is the proposing agency or river-administering agency's environmental document. Also include, if appropriate, that staff specialists utilized available additional data as described in an accompanying Section 7(b) report.

Determination: Describe the findings as to whether the proposed project will invade the area or diminish the four identified values: scenic, recreational, fish, wildlife. If the finding is that the proposal will invade the area or diminish any of the four specified values, identify recommendations to reduce adverse effects to within acceptable levels, as possible.

Signature: Of the responsible official.

Section 7(b) Report: Include, as appropriate, a report that provides the detailed discussion of the potential effects that lead to the conclusions summarized in the determination.

Acronyms & Abbreviations

NATIONAL
WILD AND SCENIC
RIVERS SYSTEM

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Acronyms & Abbreviations

ACOE	Army Corps of Engineers
Act	Wild and Scenic Rivers Act
ANILCA	Alaska National Interest Lands Conservation Act
BLM	Bureau of Land Management
BMP	Best Management Practice
BOR	Bureau of Reclamation
BPA	Bonneville Power Administration
BWCAW	Boundary Waters Canoe Area Wilderness
CFR	Code of Federal Regulations
cfs	Cubic Feet Per Second
Council	Interagency Wild and Scenic Rivers Coordinating Council
DEIS	Draft Environmental Impact Statement
DOT	Department of Transportation
EA	Environmental Assessment
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration
FAC	Federal Advisory Committee
FEMA	Federal Emergency Management Agency
FERC	Federal Energy Regulatory Commission
FHWA	Federal Highway Administration
FPA	Federal Power Act
FR	Federal Register
FSA	Farm Service Agency
Interagency Guidelines	*Departments of the Interior and Agriculture Interagency Guidelines for Eligibility, Classification and Management of River Areas* in the *Federal Register* (Vol. 47, No. 173; September 7, 1982, pp. 39454-39461).
LEIS	Legislative Environmental Impact Statement

National System	National Wild and Scenic Rivers System
NEPA	National Environmental Policy Act
NPDES	National Pollutant Discharge Elimination System
NPS	National Park Service
NRCS	Natural Resources Conservation Service (Formerly the Soil Conservation Service)
NRI	Nationwide Rivers Inventory
OMB	Office of Management and Budget
ORV	Outstandingly Remarkable Value
ORW	Outstanding Resource Water
P.L.	Public Law
pp	Pages
Q&A	Question and Answer
Reference Guide	*Interagency Wild & Scenic River Coordinating Council Reference Guide*
RHS	Rural Housing Service
RMP	River or Resource Management Plan
RUS	Rural Utilities Service Agency (Formerly the Rural Electric Administration)
SCORP	State Comprehensive Outdoor Recreation Plan
T&E	Threatened and Endangered Species
TPL	Trust for Public Lands
USC	United States Code
USCG	United States Coast Guard
USDA	United States Department of Agriculture
USDI	United States Department of the Interior
USFS	United States Forest Service
USFWS	United States Fish and Wildlife Service
USGS	United States Geological Survey
WSR	Wild and Scenic River

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